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Contents

Federal Register
Vol. 81, No. 117
Friday, June 17, 2016

Agricultural Marketing Service

PROPOSED RULES
United States Standards for Grades of Canned Vegetables, 39596–39597

Agriculture Department

See Agricultural Marketing Service
See Forest Service

Army Department

NOTICES
Privacy Act; Systems of Records, 39631–39633

Centers for Medicare & Medicaid Services

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39642–39646

Children and Families Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Record Keeping for the Timely Placement and Release of Unaccompanied Children in ORR Care, 39646–39647
Single-Source Program Expansion Supplement Grants:
  Southwest Keys, Inc., Austin, TX, 39647–39648

Coast Guard

RULES
Drawbridge Operations:
  Reynolds Channel, Nassau County, NY, 39584–39585
Special Local Regulations:
  Dragon Boat Races; Maumee River; Toledo, OH, 39582–39584

Commerce Department

See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES
Procurement List; Additions and Deletions, 39630–39631

Defense Department

See Army Department
See Engineers Corps
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections, 39642

Economic Development Administration

NOTICES
Trade Adjustment Assistance Eligibility; Petitions, 39626

Education Department

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Carl D. Perkins Career and Technical Education Act State Plan, 39635
  Guaranty Agency Financial Report, 39634–39635
  Native Hawaiian Career and Technical Education Grant Application, 39635–39636

Employment and Training Administration

NOTICES
Funding Availability:
  America's Promise Grants, 39714
Meetings:
  Workforce Information Advisory Council, 39713–39714

Energy Department

See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Standards for Manufactured Housing, 39756–39806
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39636

Energy Efficiency and Renewable Energy Office

NOTICES
Meetings:
  State Energy Advisory Board, 39636–39637

Engineers Corps

NOTICES
Requests for Nominations:
  Missouri River Recovery Implementation Committee, 39633–39634

Environmental Protection Agency

RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Iowa; Definition of Greenhouse Gas and Prevention of Significant Deterioration Plantwide Applicability Limits Revisions, 39585–39587
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Iowa; Definition of Greenhouse Gas and Prevention of Significant Deterioration Plantwide Applicability Limits Revisions, 39604–39605
  Maryland; Revisions and Amendments to Regulations for Continuous Opacity Monitoring, Continuous Emissions Monitoring, and Quality Assurance Requirements for Continuous Opacity Monitors, 39605–39607
Outer Continental Shelf Air Regulations:
  Consistency Update for California, 39607–39611
NOTICES
Environmental Impact Statements; Availability, etc.:
  Weekly Receipts, 39639

- Updates to the Demographic and Spatial Allocation Models to Produce Integrated Climate and Land Use Scenarios Version 2; Correction, 39639

Federal Aviation Administration

RULES

- Airworthiness Directives:
  - Airbus Airplanes, 39541–39543
  - Fokker Services B.V. Airplanes, 39543–39545, 39553–39556
  - The Boeing Company Airplanes, 39547–39553
  - Turbomeca S.A. Turboshaft Engines, 39545–39547
- Amendment of Class E Airspace:
  - Ogden-Hinckley, UT, 39556–39557
- Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments, 39557–39571

PROPOSED RULES

- Airworthiness Directives:
  - Dassault Aviation Airplanes, 39597–39600
  - Turbomeca S.A. Turboshaft Engines, 39601–39603
- Amendment of Class E Airspace, and Revocation of Class E Airspace:
  - Miles City, MT, 39603–39604

Federal Communications Commission

PROPOSED RULES

- Comment Sought on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 39611–39618

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39639–39641

Federal Energy Regulatory Commission

NOTICES

- Combined Filings, 39637–39639
- Complaints:
  - Competitive Transmission Developers v. New York Independent System Operator, Inc., 39637

Federal Highway Administration

NOTICES

- Buy America Waivers, 39746–39748
- Final Federal Agency Actions:
  - Proposed Highway in California, 39745–39747

Federal Motor Carrier Safety Administration

RULES

- North American Standard Out-of-Service Criteria:
  - Hazardous Materials Safety Permits, 39587–39590

Federal Railroad Administration

NOTICES

- Applications for Approval of Discontinuance or Modification of a Railroad Signal System, 39748–39750
- Petitions for Waivers of Compliance, 39748–39749

Federal Reserve System

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39641
- Changes in Bank Control:
  - Acquisitions of Shares of a Bank or Bank Holding Company, 39642

Fish and Wildlife Service

PROPOSED RULES

- Migratory Bird Subsistence Harvest in Alaska:
  - Use of Inedible Bird Parts in Authentic Alaska Native Handicrafts for Sale, 39618–39623
- Seizure and Forfeiture Procedures, 39848–39865

Food and Drug Administration

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaigns, 39675–39677
- Authorizations of Emergency Use:
  - In Vitro Diagnostic Devices for Detection of Zika Virus, 39653–39672
- Determinations of Regulatory Review Period for Purposes of Patent Extension:
  - Zilver PTX Drug Eluting Peripheral Stent, 39648–39649, 39652–39653
- Determinations of Regulatory Review Periods for Purposes of Patent Extensions:
  - ORBACTIV, 39649–39651
- Guidance for Industry:
  - Modified Release Veterinary Parenteral Dosage Forms: Development, Evaluation, and Establishment of Specifications, 39651–39652
  - Product-Specific Bioequivalence Recommendations, 39672–39673
  - Quality Attribute Considerations for Chewable Tablets, 39673–39675

Foreign-Trade Zones Board

NOTICES

- Authorization of Production Activities:
  - Volkswagen Group of America Chattanooga Operations, LLC, Foreign-Trade Zone 134, Chattanooga, TN, 39626
- Proposed Production Activities:
  - GE Renewables North America, LLC, Foreign-Trade Zone 249; Pensacola, FL, 39626–39627

Forest Service

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Generic Clearance for Non-Timber Forest Products, 39624–39626
- Meetings:
  - Delta-Bienville Resource Advisory Committee, 39624

General Services Administration

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections, 39642

Geological Survey

NOTICES

- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39710

Government Accountability Office

NOTICES

- Requests for Nominations:
  - Board of Governors of the Patient-Centered Outcomes Research Institute, 39642

Health and Human Services Department

See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Designation of a Class of Employees for Addition to the Special Exposure Cohort, 39677–39678

Homeland Security Department

See Coast Guard
See U.S. Customs and Border Protection
NOTICES
Privacy Act; Systems of Records, 39680–39686

Housing and Urban Development Department

NOTICES
Allocations, Common Applications, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees, 39687–39710
Federal Property Suitable as Facilities to Assist the Homeless, 39686–39687

Indian Affairs Bureau

RULES
Leasing of Osage Reservation Lands for Oil and Gas Mining, 39572–39582

Interior Department

See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau

International Trade Administration

NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
  Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China and the Republic of Korea, 39629–39630
  Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan, 39627–39629
Request for Panel Review:
  North American Free Trade Agreement, Article 1904, 39627

International Trade Commission

NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
  Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, 39711
Investigations; Determinations, Modifications, and Rulings, etc.:
  Certain Passenger Vehicle Automotive Wheels, 39711–39712

Justice Department

NOTICES
Proposed Consent Decrees under CERCLA, 39712–39713

Labor Department

See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Prohibited Transaction Class Exemption 1988–59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans, 39716–39717
  Transition Assistance Program Email/Text Pilot Study: Survey to Assess Use of AJC Services and Collect Feedback, 39717–39718
List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor; Revision, 39714–39716

Legal Services Corporation

NOTICES
Meetings; Sunshine Act; Correction, 39718

Maritime Administration

NOTICES
Meetings:
  U.S. Merchant Marine Academy Board of Visitors; Cancellation, 39750

Mine Safety and Health Administration

PROPOSED RULES
Exposure of Underground Miners to Diesel Exhaust, 39604

National Aeronautics and Space Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections, 39642
Grants of Exclusive Research Licenses, 39718–39719

National Credit Union Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39719–39720
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Call Report and Credit Union Profile, 39719

National Institutes of Health

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Cancer Prevention Fellowship Program Fellowship Program and Summer Curriculum Applications, 39679
  Development of the Interagency Autism Coordinating Committee Strategic Plan for Autism Spectrum Disorder, 39678–39679

National Oceanic and Atmospheric Administration

RULES
Fisheries of the Northeastern United States:
  Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship North Access Area to General Category Individual Fishing Quota Scallop Vessels, 39590–39591
  Blueline Tilefish Fishery; Secretarial Interim Action, 39591–39595

Nuclear Regulatory Commission

NOTICES
Combined License Applications:
  Duke Energy Florida, LLC; Levy Nuclear Plant, Units 1 and 2, 39720–39721

Establishment of Atomic Safety and Licensing Board;
  Alexander Abrahams (Denial of Reactor Operator License), 39721

Postal Service

NOTICES

International Product Changes:
  GEPS 6 Contracts, 39721–39722

Securities and Exchange Commission

RULES

Trade Acknowledgment and Verification of Security-Based Swap Transactions, 39808–39845

NOTICES

Exemptions from Compliance with Interactive Data File Exhibit Requirement, 39741–39743
Self-Regulatory Organizations; Proposed Rule Changes:
  Bats EDGX Exchange, Inc., 39731–39732
  ICE Clear Credit LLC, 39743–39745
  ICE Clear Europe Ltd., 39729–39730
  NASDAQ Stock Market LLC, 39724–39726, 39736–39740
  National Stock Exchange, Inc., 39727–39729
  New York Stock Exchange, LLC, 39722–39724
  Options Clearing Corp., 39732–39736
Trading Suspension Orders:
  Advanced Life Sciences Holdings, Inc., Anoteros, Inc., Emperial Americas, Inc., Nord Resources Corp., and UNR Holdings, Inc., 39740–39741
  Cascade Technologies Corp., Echo Automotive, Inc., and Vision Industries Corp., 39726–39727
  MIT Holding, Inc., 39738

Small Business Administration

NOTICES

Meetings:
  National Small Business Development Center Advisory Board, 39745

Transportation Department

See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Maritime Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39750–39751

Treasury Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39751–39752

U.S. Customs and Border Protection

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers, 39680

United States Sentencing Commission

NOTICES

Requests for Applications:
  Federal Public Defenders Advisory Group, 39752–39753

Veterans Affairs Department

NOTICES

Meetings:
  Advisory Committee on Former Prisoners of War, 39753

Separate Parts In This Issue

Part II

Energy Department, 39756–39806

Part III

Securities and Exchange Commission, 39808–39845

Part IV

Interior Department, Fish and Wildlife Service, 39848–39865

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
52....................................39596

10 CFR
Proposed Rules:
460..................................39756

14 CFR
39 (5 documents) 39541, 39543, 39545, 39547, 39553
71....................................39556
97 (6 documents) 39557, 39559, 39562, 39565, 39567, 39569
Proposed Rules:
39 (2 documents) 39597, 39601
71....................................39603

17 CFR
240..................................39808

25 CFR
226..................................39572

30 CFR
Proposed Rules:
57....................................39604
70....................................39604
72....................................39604
75....................................39604

33 CFR
100..................................39582
117..................................39584

40 CFR
52....................................39585
Proposed Rules:
52 (2 documents) 39604, 39605
55....................................39607

47 CFR
Proposed Rules:
1......................................39611

49 CFR
385..................................39587

50 CFR
648 (2 documents) 39590, 39591
Proposed Rules:
12....................................39848
92....................................39618

Rules and Regulations

Federal Register
Vol. 81, No. 117
Friday, June 17, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3988; Directorate Identifier 2015–NM–130–AD; Amendment 39–18546; AD 2016–11–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by reports of chafing of the feeder cable at the pylon-wing junction due to vibration; one report revealed that the cable loom plastic support bracket of the G-route was broken due to vibration; and another report revealed wire chafing due to clamp damage. This AD requires modifying the cable loom support bracket of the G-route of the inboard pylons at the pylon-wing junction. We are issuing this AD to prevent chafing of the wiring in the pylon-wing area, which could result in an electrical short circuit near a flammable fluid vapor zone, and consequent fire or fuel tank explosion.

DATES: This AD is effective July 22, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 22, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3988.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3988; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on March 1, 2016 (81 FR 10549) ("the NPRM"). The NPRM was prompted by reports of chafing of the feeder cable at the pylon-wing junction due to vibration; one report revealed that the cable loom plastic support bracket of the G-route was broken due to vibration; and another report revealed wire chafing due to clamp damage. The NPRM proposed to require modifying the cable loom support bracket of the G-route of the inboard pylons at the pylon-wing junction. We are issuing this AD to prevent chafing of the wiring in the pylon-wing area, which could result in an electrical short circuit near a flammable fluid vapor zone, and consequent fire or fuel tank explosion.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0142, dated July 17, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> Two events have been reported of feeder cable chafing at the pylon-wing junction on A330 aeroplanes. Inspection of the affected area for the first event revealed that the bracket supporting the cables G-route, made in plastic, was broken. The second event was due to clamp damage. Failure of support bracket and/or damage of clamp led to the feeder cables gradually chafing away at the cut-out edge by vibration. Due to design similarity, A340 aeroplanes are also affected by this issue.
>
> This condition, if not corrected, could create a short circuit, in combination with fuel vapour on [the] ground, possibly resulting in a fire or explosion.
>
> To address this unsafe condition, Airbus developed modifications to be embodied in service through Airbus Service Bulletin (SB) A330–92–3132, SB A340–92–4100 or SB A340–92–5066, as applicable to aeroplane type and model.
>
> For the reasons described above, this [EASA] AD requires the embodiment of these modifications [of the cable loom support bracket of the G-route of the inboard pylons] at the pylon/wing junction in [left-hand] LH and [right-hand] RH wings.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3988.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed the following Airbus service information:

- Service Bulletin A330–92–3132, Revision 01, dated May 21, 2015.
- Service Bulletin A340–92–4100, Revision 01, dated May 21, 2015.
- Service Bulletin A340–92–5066, dated June 25, 2014.

This service information describes procedures for modifying the cable loom support bracket of the G-route of the inboard pylons at the pylon-wing junction. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 90 airplanes of U.S. registry.

We also estimate that it takes about 8 work-hours per product to comply with the modification requirements of this AD. Required parts will cost about $900 per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost for the inspection specified in this AD on U.S. operators to be $142,200, or $1,580 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–19 Airbus: Amendment 39–18546; Docket No. FAA–2016–3988; Directorate Identifier 2015–NM–130–AD.

(a) Effective Date

This AD is effective July 22, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; except airplanes on which Airbus Modification 203672 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of chafing of the feeder cable at the pylon-wing junction due to vibration; one report revealed that the cable loom plastic support bracket of the G-route was broken due to vibration; and another report revealed wire chafing due to clamp damage. We are issuing this AD to prevent chafing of the wiring in the pylon-wing area, which could result in an electrical short circuit near a flammable fluid vapor zone, and consequent fire or fuel tank explosion.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modification of the Feeder Cable

Within 18 months after the effective date of this AD: Modify the cable loom support bracket of the G-route 7701VB in the left-hand side of the inboard pylon, and the G-route 7702VB in the right-hand side of the inboard pylon, located at the pylon-wing junction, in accordance with the applicable service information specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) Airbus Service Bulletin A330–92–3132, Revision 01, dated May 21, 2015.

(2) Airbus Service Bulletin A340–92–4100, Revision 01, dated May 21, 2015.

(3) Airbus Service Bulletin A340–92–5066, dated June 25, 2014.

(h) Credit for Previous Actions

This paragraph provides credit for the modification required by paragraph (g) of this AD, if the modification was performed before the effective date of this AD using Airbus Service Bulletin A330–92–3132, dated June 19, 2014; or Airbus Service Bulletin A340–92–4100, dated June 19, 2014; as applicable. This service information is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as

appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0142, dated July 17, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3988.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(4) and (k)(5) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 22, 2016.

(i) Airbus Service Bulletin A330–92–3132, Revision 01, dated May 21, 2015.

(ii) Airbus Service Bulletin A340–92–4100, Revision 01, dated May 21, 2015.

(iii) Airbus Service Bulletin A340–92–5066, dated June 25, 2014.

(4) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 26, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13105 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8467; Directorate Identifier 2014–NM–107–AD; Amendment 39–18541; AD 2016–11–14]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. This AD was prompted by a design review that revealed no controlled bonding provisions are present on a number of critical locations inside the fuel tanks or connected to the walls of the fuel tanks. This AD requires installing additional and improved bonding provisions in the fuel tanks and revising the airplane maintenance or inspection program, as applicable, by incorporating fuel airworthiness limitation items and critical design configuration control limitations (CDCCLs). We are issuing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective July 22, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 22, 2016.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8467.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8467; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3051) ("the NPRM").

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0108, dated May 8, 2014 (referred to after this the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The MCAI states:

> Prompted by an accident * * *, the Federal Aviation Administration (FAA) published Special Federal Aviation Regulation (SFAR) 88 [(66 FR 23086, May 7, 2001)], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> The review conducted by Fokker Services on the Fokker F28 design, in response to these regulations, revealed that no controlled bonding provisions are present on a number of critical locations, inside the fuel tank or connected to the fuel tank wall.
>
> This condition, if not corrected, could create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosions and consequent loss of the aeroplane.
>
> To address this potential unsafe condition, Fokker Services developed a set of fuel tank bonding modifications.
>
> For the reasons described above, this [EASA] AD requires the installation of additional and improved bonding provisions [and a revision of the maintenance or inspection program, as applicable]. These modifications require opening of the fuel tank access panels.
>
> More information on this subject can be found in Fokker Services All Operators Message AOF28.038#02.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8467.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Changes Made to This AD

We have revised the document citations in paragraphs (g) and (h) of this AD to meet the Office of the Federal Register's requirements for materials incorporated by reference.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Fokker Proforma Service Bulletin SBF28–28–058, dated January 9, 2014; and Fokker F28 Appendix Service Bulletin SBF28–28–058/APP01, dated July 15, 2014. The service information describes procedures for installing improved bonding provisions for the transfer jet pumps, ventilation float valves, center tank overflow valves, and level control pilot valves wiring conduit; and applicable related investigative and corrective actions.

We also reviewed Fokker Service Bulletin SBF28–28–050, Revision 3, dated December 11, 2014. The service information describes certain fuel airworthiness limitation items and CDCCLs.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 5 airplanes of U.S. registry.

We also estimate that it will take about 21 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $8,925, or $1,785 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–14 Fokker Services B.V.: Amendment 39–18541. Docket No. FAA–2015–8467; Directorate Identifier 2014–NM–107–AD.

(a) Effective Date

This AD is effective July 22, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a design review that revealed no controlled bonding provisions are present on a number of critical locations inside the fuel tanks or connected to the walls of the fuel tanks. We are issuing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Installation of Bonding Provisions

At the next scheduled opening of the fuel tanks after the effective date of this AD, but no later than 84 months after the effective date of this AD, install additional and improved bonding provisions in the fuel tanks, and do the applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Fokker Proforma Service Bulletin SBF28–28–058, dated January 9, 2014; and Fokker F28 Appendix Service Bulletin SBF28–28–058/APP01, dated July 15, 2014.

(h) Revision of Maintenance or Inspection Program

Before further flight after completing the installation specified in paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the airplane maintenance or inspection program, as applicable, by incorporating the fuel airworthiness limitation items and critical design configuration control limitations (CDCCLs) specified in paragraph 1.L.(1)(c) of Fokker Proforma Service Bulletin SBF28–28–058, dated January 9, 2014. The initial compliance times for the tasks are at the latest of the times specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) At the applicable time specified in Fokker Service Bulletin SBF28–28–050, Revision 3, dated December 11, 2014.

(2) Before further flight after completing the installation specified in paragraph (g) of this AD.

(3) Within 30 days after the effective date of this AD.

(i) No Alternative Actions, Intervals, and CDCCLs

After accomplishment of the revision required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0108, dated May 8, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8467.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker F28 Appendix Service Bulletin SBF28–28–058/APP01, dated July 15, 2014.

(ii) Fokker Proforma Service Bulletin SBF28–28–058, dated January 9, 2014.

(iii) Fokker Service Bulletin SBF28–28–050, Revision 3, dated December 11, 2014.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 20, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12595 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8257; Directorate Identifier 2015–NE–36–AD; Amendment 39–18555; AD 2016–12–06]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Turbomeca S.A. MAKILA 2A and MAKILA 2A1 turboshaft engines. This AD requires repetitive diffuser inspections and replacement of those diffusers that fail inspection. This AD was prompted by two occurrences of crack initiation on a ferrule of the diffuser. We are issuing this AD to prevent rupture of the ferrule of the diffuser, which could result in engine fire and damage to the helicopter.

DATES: This AD becomes effective July 22, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 22, 2016.

ADDRESSES: For service information identified in this final rule, contact Turbomeca S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8257.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8257; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket

Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on March 11, 2016 (81 FR 12834) ("the NPRM"). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Two occurrences of crack initiation were reported on a ferrule of diffuser part number (P/N) 0298210100, which propagated and led to the ferrule rupture. The investigation shows in both cases that the ruptured ferrule contacted and punctured the main fuel supply line, resulting in a fuel leak. This condition, if not detected and corrected, could lead to an engine fire, consequently triggering an uncommanded engine in flight shut down, possibly resulting in an emergency landing. Prompted by these occurrences, Turbomeca published Mandatory Service Bulletin (MSB) No. 298 72 2832 to provide repetitive inspection instructions.

This AD requires repetitive inspections of the affected diffuser and removal of those diffusers that fail the required inspection. You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8257.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM.

We increased the compliance time for repetitive inspection from 50 hours since last inspection to 300 hours since last inspection. We updated the revision number and date of Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. A298 72 2832 throughout this AD and changed the Credit for Previous Actions paragraph as a result of the MSB change.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Turbomeca S.A. has issued Alert MSB No. A298 72 2832, Version C, dated April 15, 2016. The Alert MSB describes procedures for repetitive inspections of the affected diffuser and depending on findings, accomplishment of the corrective action(s).

Costs of Compliance

We estimate that this AD affects 10 engines installed on helicopters of U.S. registry. We also estimate that it will take about 2 hours per engine to comply with this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,700.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–12–06 Turbomeca S.A.: Amendment 39–18555; Docket No. FAA–2015–8257; Directorate Identifier 2015–NE–36–AD.

(a) Effective Date

This AD becomes effective July 22, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca S.A. MAKILA 2A and MAKILA 2A1 turboshaft engine models with a high-pressure gas generator module (M03) that has modification (mod) TU 52 installed.

(d) Reason

This AD was prompted by two occurrences of crack initiation on a ferrule of the diffuser, which propagated and led to the ferrule rupture. We are issuing this AD to prevent rupture of the ferrule of the diffuser, which could result in engine fire and damage to the helicopter.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Borescope inspect the centrifugal diffuser ferrule, part number 0298210100, prior to the ferrule accumulating 700 hours, time since new or time since replacement or within 30 hours from the effective date of this AD, whichever is later. Use Accomplishment Instructions, paragraphs 2.4.1 through 2.4.2.2.1, of Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. 298 72 2832, Version C, dated April 15, 2016, to do the borescope inspections required by this AD.

(2) Repeat the borescope inspection required by this AD every 300 hours since last inspection.

(3) If any crack, loss of contact between the ferrule and diffuser axial vane, or any contact between the injection manifold supply pipe and the diffuser ferrule is found, remove the diffuser case and replace the ferrule with a part eligible for installation.

(f) Credit for Previous Actions

You may take credit for the actions required by paragraph (e) of this AD if you performed those actions using Turbomeca S.A. MSB No. 298 72 2832, Version B, dated October 12, 2015 or earlier versions, before the effective date of this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0209R1, dated April 20, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–8257.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Turbomeca S.A. Alert MSB No. A298 72 2832, Version C, dated April 15, 2016.

(ii) Reserved.

(3) For Turbomeca S.A. service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 10, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–14234 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD; Amendment 39–18543; AD 2016–11–16]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and -300 series airplanes equipped with Rolls-Royce Model RB211-Trent 800 engines. This AD was prompted by reports of thrust reverser (T/R) events related to thermal damage of the T/R inner wall. Depending on the airplane configuration, this AD requires a records review and applicable repetitive inspections, replacements, and installations of the T/R inner wall; and related investigative and corrective actions if necessary. This AD also requires installation of serviceable T/R halves, which would terminate the repetitive actions. This AD also requires revising the inspection or maintenance program by incorporating new airworthiness limitations. We are issuing this AD to detect and correct a degraded T/R inner wall panel. A degraded T/R inner wall panel could lead to failure of the T/R and adjacent components and their consequent separation from the airplane, which could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a T/R inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or possible injury to people on the ground.

DATES: This AD is effective July 22, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 22, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2011–0027.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2011–0027; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200 and -300 series airplanes equipped with Rolls-Royce Model RB211-Trent 800 engines. The SNPRM published in the **Federal Register** on September 25, 2015 (80 FR 57744) ("the SNPRM"). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on January 20, 2011 (76 FR 3561) ("the NPRM"). The NPRM proposed to require repetitive inspections for degradation of T/R structure and sealant, and related investigative and corrective actions if necessary. The NPRM was prompted by reports of T/R events related to thermal damage of the T/R inner wall. The SNPRM proposed to revise the NPRM by adding different repetitive inspection requirements for T/R halves with a thermal protective system installed. The SNPRM also proposed to revise the NPRM by requiring installation of serviceable T/R halves, which would terminate the repetitive inspections. The SNPRM also proposed to revise the inspection or maintenance program by incorporating new airworthiness limitations. We are issuing this AD to detect and correct a degraded T/R inner wall panel. A degraded T/R inner wall panel could lead to failure of the T/R and adjacent components and their consequent separation from the airplane, which could result in an RTO and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a T/R inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or possible injury to people on the ground.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM and the FAA's response to each comment.

Request To Change Compliance Reference

Boeing requested that we revise paragraph (k)(2) of the proposed AD (in the SNPRM) by adding "table 5" to the reference to the Compliance paragraph in Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015. Boeing stated that this change would be consistent with how paragraph (k)(1) of the proposed AD (in the SNPRM) refers to the Compliance paragraph.

We agree with the commenter's request for the reason provided. We have revised paragraph (k)(2) of this AD accordingly.

Request To Modify Alternative Method of Compliance (AMOC) Statement

Boeing requested that the AMOC statement specified in paragraph (r)(3) of the proposed AD (in the SNPRM) be revised by adding a sentence to allow an AMOC for the serviceable T/R assembly to be transferred to other airplanes. Boeing stated that an AMOC provided for a repaired and serviceable unit is able to be attached to and travel with the repaired unit. Boeing added that a serviceable unit is a rotable part and can be installed on multiple airplanes during the life of the unit. Boeing noted that paragraph (l)(3) of AD 2015–19–16, Amendment 39–18278 (80 FR 59570, October 2, 2015) contains language similar to the requested language.

We disagree with the request because we are now able to issue an AMOC that applies to multiple products operated by a single operator (commonly referred to as a fleet AMOC). This procedure allows AMOCs to address rotable parts. We have not changed this AD in this regard.

Request To Update Service Information

Boeing requested that the revision date of Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated October 2014, be updated to reflect the latest FAA-approved revision. Boeing stated that AWL 78–AWL–01, Thrust Reverser Thermal Protection System, was revised recently to include Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014, in the applicability note of the AWL.

We agree to reference the most recent revision of Boeing 777 MPD Document Section 9, AWLs and CMRs, D622W001–9 (which is referred to as Temporary Revision (TR) 09–030, Revision dated November 2015, on *MyBoeingFleet.com*), because the new applicability note clarifies that AWL 78–AWL–01 applies to T/R halves on which the actions specified in Boeing Alert Service Bulletin 777–78A0094 have been done. As a result, we have revised the introductory text to paragraph (n) of this AD accordingly. We have also added a new paragraph (p)(5) to this AD to provide credit for accomplishing the revision required by paragraph (n) of this AD using Boeing 777 MPD Document, Section 9, AWLs and CMRs, D622W001–9, Revision dated October 2014.

Request To Modify Initial Inspection

Boeing requested that paragraph (n)(1) of the proposed AD (in the SNPRM) be revised to allow deferral of the initial inspection for AWL 78–AWL–01, Thrust Reverser Thermal Protection System. Boeing stated that the compliance time should be 1,125 days or 6,000 flight cycles, whichever occurs first, after the last inspection for AWL 78–AWL–01, Thrust Reverser Thermal Protection System, "for T/Rs that have already incorporated 78–AWL–01." Boeing stated that when the AD becomes effective, T/R halves on which Boeing Alert Service Bulletin 777–78A0094 and AWL 78–AWL–01, Thrust Reverser Thermal Protection System, have been incorporated are not subject to the inspections specified in paragraph (i) of the proposed AD (in the SNPRM) and should not be required to do the inspection required by AWL 78–AWL–01 concurrent with the next inspection required by paragraph (i) of this AD or within 30 days after the effective date of this AD, whichever occurs later.

We agree with allowing deferral of the initial inspection for AWL 78–AWL–01, Thrust Reverser Thermal Protection System, for the reasons provided by the commenter. We have revised the compliance time for AWL 78–AWL–01, Thrust Reverser Thermal Protection System, as requested by the commenter. We have revised the introductory text to paragraph (n), and reformatted and revised paragraphs (n)(1) and (n)(2) of this AD, to accommodate the commenter's request. We clarified the affected airplanes for the compliance as specified in paragraph (n)(1) of this AD by stating, "For airplanes on which any inspections required by paragraph (i) of this AD are done." We clarified the affected airplanes for the compliance as specified in paragraph (n)(2) of this AD by stating, "For airplanes on which the installation required by paragraph (l) of this AD is done."

Request To Review Inspection Methods

American Airlines requested that the FAA review the inspection methods and instructions required in paragraph (i) of the proposed AD (in the SNPRM) when doing a nondestructive test (NDT) inspection for delaminations and disbonds; and ensuring false positive findings are prevented or minimized. American Airlines stated that they inspected eight T/R inner walls in accordance with paragraph (i)(1) of the proposed AD (in the SNPRM) and found disbonded material. American Airlines stated that after they contacted the original equipment manufacturer (OEM) and re-inspected, several units were determined to be false positives. American Airlines surmised that the instructions or possible training for inspections may not be sufficient.

We acknowledge the commenter's concern. However, we have determined the NDT inspections for disbonds and damage required in paragraph (i) and associated service information produce reliable inspection results and adequately detect disbonds and damage. Through technical discussion with the OEM, we understand that the false positive indications were a result of a maintenance vendor using a non-OEM inspection manual that had a faulty NDT inspection standard. We have not revised this AD in this regard.

Request To Review Airworthiness Limitation Inspection Procedures

American Airlines stated it had a T/R inner wall that required repair, but the damage would not have been detected by the inspection specified in Airworthiness Limitation 78–AWL–02, Thrust Reverser Inner Wall, as specified in Boeing MPD Document, Section 9, AWLs and CMRs, D622W001–9, Revision dated October 2014. American Airlines stated the damage would likely have passed inspection because it did not indicate any heat discoloration, and other areas of disbonds or damage on the inner wall could be potentially missed after the incorporation of Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014, and AWL 78–AWL–02. We infer the commenter is requesting that we review AWL 78–AWL–02 to ensure that thermal damage on the inner wall is not missed.

We acknowledge the commenter's concern, and we might consider additional rulemaking to address that concern in the future. We contacted Boeing, and Boeing stated they are working with American Airlines to determine if a change needs to be made to the service information. However, until such additional action is identified, we consider it appropriate to proceed with issuance of this final rule to address the identified unsafe condition. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed the following Boeing service information.

- Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010. This service information describes procedures for a review of the airplane maintenance records to determine whether sealant was added to insulation blankets around compression pad fittings and the powered door opening system (PDOS) fitting; inspections of the T/R structure; and related investigative and corrective actions.
- Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014. This service information describes procedures for installing serviceable T/R halves.
- Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013. This service information describes, among other actions, procedures for inspections of the T/R structure, and related investigative and corrective actions, if necessary. Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, also describes, for airplanes on which the actions specified in Boeing Special Attention Service Bulletin 777–78–0071, dated November 29, 2009, have been done, procedures for installation of click bond covers and a bracket, a general visual inspection of the compression fitting for incorrect pin orientation, and related investigative and corrective actions, if necessary.
- Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001 9, Revision dated November 2015. This service information provides required AWLs and CMRs for The Boeing Company Model 777 airplanes. The two AWLs specifically required by this AD are AWL 78–AWL–01, Thrust Reverser Thermal Protection System, which describes an inspection of the T/R thermal protection system on both engines; and AWL 78 AWL–02, which describes an inspection of the T/R inner wall.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 55 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per product	Fleet cost
Actions per Boeing Alert Service Bulletin 777-78A0065, Revision 2, dated May 6, 2010.	Up to 79 work-hours, per T/R half.	$85	$0	Up to $6,715 per T/R half.	$0 (No airplanes on the U.S. Register are in the configuration specified in Boeing Alert Service Bulletin 777-78A0065, Revision 2, dated May 6, 2010.)
Actions per Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.	Up to 48 work-hours, per T/R half.	85	$0	Up to $4,080 per T/R half.	Up to $897,600 (4 T/R halves per airplane).
Inspections per Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015.	Up to 39 work-hours, per T/R half.	85	$0	Up to $3,315 per T/R half.	$0 (No airplanes on the U.S. Register are in the configuration specified in Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015.)
Maintenance or Inspection Program Revision.	1 work-hour	85	$0	$85	$4,675.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts cost	Cost per product	Fleet cost
T/R half installation per Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014.	Up to 206 work-hours, per T/R half.	85	Up to $400,651 per T/R half[1].	Up to $418,161 per T/R half.	Up to $91,995,420 (4 T/R halves per airplane).[2]

[1] The cost of parts is split into two major parts: (1) Thermal protection system (TPS) blankets and (2) inner wall structure. The vast majority of the work associated with the TPS upgrade has already been completed. In addition, nearly half of the inner wall structure modification has already been done.

[2] The fleet cost estimate above is based on a general estimate for a given airplane with two engines having two T/R halves for each engine. Not all tasks required by this AD and specified in the service information would need to be done for a given T/R half. For a given TR half, it may only be necessary to accomplish certain actions or none for compliance, depending on its configuration status. We have no data to determine any given T/R half configuration to determine the cost for each T/R half to do the applicable actions for that T/R half. The majority of this cost has already been incurred.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–16 The Boeing Company: Amendment 39–18543; Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD.

(a) Effective Date

This AD is effective July 22, 2016.

(b) Affected ADs

This AD affects AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005).

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Rolls-Royce Model RB211-Trent 800 engines.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Unsafe Condition

This AD was prompted by reports of thrust reverser (T/R) events related to thermal damage of the T/R inner wall. We are issuing this AD to detect and correct a degraded T/R inner wall panel. A degraded T/R inner wall panel could lead to failure of the T/R and adjacent components and their consequent separation from the airplane, which could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a T/R inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or possible injury to people on the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Records Review, Inspections, and Related Investigative and Corrective Actions for Airplanes With Pre-Thermal Protection System (TPS) Insulation Blankets (Part Numbers (P/Ns) 315W5113–(XX) and 315W5010–(XX)) Installed

For airplanes with pre-TPS insulation blankets, P/Ns 315W5113–(XX) and 315W5010–(XX): Except as required by paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, at the applicable time in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, review the airplane maintenance records to determine whether sealant was added to insulation blankets around the compression pad fittings and the powered door opening system (PDOS) fitting; do the applicable actions specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), and (g)(6) of this AD; and do all applicable related investigative and corrective actions; in accordance with the applicable work packages of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, except as required by paragraph (h)(5) of this AD. Do all applicable related investigative and corrective actions before further flight.

Repeat the applicable inspections, replacement, and installations required by paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), and (g)(6) of this AD thereafter at the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010.

(1) Do a detailed inspection of all T/R inner wall insulation blanket edges, grommet holes, penetrations, and seams for sealant that is cracked, has gaps, is loose, or is missing; do a general visual inspection of click bond studs, blanket studs, and temporary fasteners; and replace sealant as applicable.

(2) Do the actions specified by either paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Do a full inner wall panel nondestructive test (NDT) inspection for delamination and disbonding of each T/R half, and do a general visual inspection for areas of thermal degradation.

(ii) Do a limited area NDT inspection of the inner wall panel of each T/R half for delamination and disbonding, and do a general visual inspection for areas of thermal degradation.

(3) Do a general visual inspection of the T/R perforated wall aft of the intermediate pressure compressor 8th stage (IP8) and the high pressure compressor 3rd stage (HP3) bleed port exits for a color that is different from that of the general area.

(4) Do a detailed inspection of the PDOS lug bushings on the upper number 1 compression pad fittings to detect hole elongation, deformation, and contact with the PDOS actuator; and install a PDOS actuator rod and sealant.

(5) Do an NDT inspection for unsatisfactory number 1 upper and numbers 1 and 2 lower compression pad fittings.

(6) Install and seal insulation blankets.

(h) Exceptions to Specifications of Boeing Alert Service Bulletin 777–78A0065, Revision 2, Dated May 6, 2010

(1) Where paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies a compliance time "after the date on the original issue of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where table 2 of paragraph 1.E., "Compliance," in Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies a compliance time of "2,000 flight cycles after the date of the operator's own inspections," for doing Work Packages 2 and 5, or Work Packages 5 and 6, this AD requires compliance within 2,000 flight cycles after the date of the operator's own inspections, or within 12 months after the effective date of this AD, whichever occurs later.

(3) Where the Condition column in table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, refers to a T/R half that has or has not been inspected before "the date on this service bulletin," this AD requires compliance for each corresponding T/R half that has or has not been inspected before the effective date of this AD.

(4) Where the Condition column in tables 2 and 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, refers to "total flight cycles," this AD applies to each T/R half with the specified total flight cycles as of the effective date of this AD.

(5) Where Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

(i) Repetitive NDT and Additional Inspections for Airplanes With TPS Insulation Blankets (P/N 315W5115–(XX)) Installed

For airplanes with TPS insulation blankets, P/N 315W5115–(XX): Within 2,000 flight cycles after doing any NDT inspection specified in Boeing Special Attention Service Bulletin 777–78–0071; or within 2,000 flight cycles after doing any NDT inspection specified in Boeing Service Bulletin 777–78–0082; or within 30 days after the effective date of this AD; whichever occurs latest; do the inspections specified in paragraphs (i)(1) and (i)(2) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, or in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015, as applicable; except as required by paragraph (m) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections specified in paragraphs (i)(1) and (i)(2) of this AD thereafter at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013; or Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; as applicable.

(1) Do an NDT inspection of the full T/R inner wall panel for delaminations and disbonds.

(2) Do a detailed inspection of the perforated side of the T/R inner wall aft of the IP8 and the HP3 bleed port exits for color that is different from the normal T/R perforated wall color.

(j) Concurrent Requirements for Paragraph (i) of This AD

For airplanes with TPS insulation blankets, P/N 315W5115–(XX), on which any action specified in Boeing Special Attention Service Bulletin 777–78–0071 have been done but the actions specified in paragraphs (j)(1) and (j)(2) of this AD have not been done: Prior to or concurrently with doing the inspection required by paragraph (i) of this AD, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, except as required by paragraph (m) of this AD.

(1) Install click bond covers and bracket and replace the washers.

(2) Do a detailed inspection of the compression fitting for incorrect pin orientation, and do all applicable related investigative and corrective actions. Do all applicable related investigative and corrective actions before further flight.

(k) Repetitive Electronic Engine Control (EEC) Wire Bundle Inspections for Airplanes With TPS Insulation Blankets (P/N 315W5115–(XX)) Installed

For airplanes with TPS insulation blankets, P/N 315W5115–(XX): Do the inspections specified in paragraphs (k)(1) or (k)(2) of this AD, as applicable.

(1) For airplanes on which any inspection specified in Boeing Special Attention Service Bulletin 777–78–0071 has been done: Within 2,000 flight hours after doing a detailed inspection of the EEC wire bundles and clips as specified in Boeing Special Attention Service Bulletin 777–78–0071, or within 500 flight hours after the effective date of this AD, whichever occurs later; do a detailed inspection of the EEC wire bundles and clips for damage, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, except as required by paragraph (m) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in table 5 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013.

(2) For airplanes on which any inspection specified in Boeing Service Bulletin 777–78–0082, has been done: Within 2,000 flight hours after doing a detailed inspection of the EEC wire bundles and clips as specified in Boeing Special Attention Service Bulletin 777–78–0082, or within 500 flight hours after the effective date of this AD, whichever occurs later; do a detailed inspection for damage of the EEC wire bundles and clips, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015, except as required by paragraph (m) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in table 5 of paragraph 1.E., "Compliance," of Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015.

(l) T/R Inner Wall Installation

Within 48 months after the effective date of this AD: Install serviceable T/R halves, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014, except as required by paragraph (m) of this AD. The definition of a serviceable T/R half is specified in Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014. Accomplishing the installation specified in this paragraph and the revision to the maintenance or inspection program required by paragraph (n) of this AD terminates the actions required by paragraphs (g), (i), (j), and (k) of this AD.

(m) Exceptions to Service Information Specified in Paragraphs (i), (j), (k), and (l) of This AD

Where Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014; Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013; specify to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

(n) Revise the Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airworthiness Limitations 78–AWL–01, Thrust Reverser Thermal Protection System; and 78–AWL–02, Thrust Reverser Inner Wall; as specified in Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated November 2015. The initial compliance times for AWLs 78–AWL–01, Thrust Reverser Thermal Protection System, and 78–AWL–02, Thrust Reverser Inner Wall, as specified in Boeing 777 MPD Document, Section 9, AWLs and CMRs, D622W001–9, Revision dated November 2015, are at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD.

(1) For airplanes on which any inspections required by paragraph (i) of this AD are done: Concurrent with the next inspection required by paragraph (i) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the installation required by paragraph (l) of this AD is done: At the later of the times specified in paragraph (n)(2)(i) and (n)(2)(ii) of this AD.

(i) Within 1,125 days or 6,000 flight cycles, whichever occurs first after accomplishing the installation required by paragraph (l) of this AD.

(ii) Within 30 days after the effective date of this AD.

(o) No Alternative Actions or Intervals

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (n) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (r) of this AD.

(p) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–78A0065, dated June 23, 2008; or Boeing Alert Service Bulletin 777–78A0065, Revision 1, dated January 29, 2009. This service information is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraph (i) of this AD, if those actions were performed before the effective date of this AD using any service information specified in paragraphs (p)(2)(i), (p)(2)(ii), and (p)(2)(iii) of this AD. This service information is not incorporated by reference in this AD.

(i) Boeing Service Bulletin 777–78–0082, dated November 9, 2011.

(ii) Boeing Special Attention Service Bulletin 777–78–0071, dated November 25, 2009.

(iii) Boeing Special Attention Service Bulletin 777–78–0071, Revision 1, dated September 8, 2010.

(3) This paragraph provides credit for the actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–78–0071, Revision 1, dated September 8, 2010. This service information is not incorporated by reference in this AD.

(4) This paragraph provides credit for the actions specified in paragraph (k)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 777–78–0082, dated November 9, 2011. This service information is not incorporated by reference in this AD.

(5) This paragraph provides credit for the actions specified in paragraph (n) of this AD, if those actions were performed before the effective date of this AD using Boeing 777 MPD Document, Section 9, AWLs and CMRs, D622W001–9, Revision dated October 2014. This service information is not incorporated by reference in this AD.

(q) Terminating Action for AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005)

Accomplishing the actions specified in paragraph (q)(1), (q)(2), or (q)(3) of this AD terminates the actions required by paragraphs (f), (g), and (h) of AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005).

(1) The actions required by paragraph (g) of this AD.

(2) The inspections required by paragraphs (i) and (k) of this AD, and, as applicable, the actions required by paragraph (j) of this AD.

(3) The installation specified in paragraph (l) of this AD.

(r) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (s)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(s) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (t)(3) and (t)(4) of this AD.

(t) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010.

(ii) Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014.

(iii) Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015.

(iv) Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013.

(v) Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated November 2015.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 20, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13051 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8137; Directorate Identifier 2014–NM–104–AD; Amendment 39–18561; AD 2016–12–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2008–05–18 R1 for certain Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 airplanes. AD 2008–05–18 R1 required revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This new AD requires a new maintenance or inspection program revision to incorporate the revised Airworthiness Limitation Items (ALIs) and critical design configuration control limitations (CDCCLs). This new AD also adds certain airplanes to the applicability. This AD was prompted by the issuance of revised service information to update the Fuel ALIs and CDCCLs that address fuel tank system ignition sources. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective July 22, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 22, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 23, 2009 (74 FR 57402, November 6, 2009).

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket Number FAA–2015–8137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8137; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–05–18 R1, Amendment 39–16083 (74 FR 57402, November 6, 2009) ("AD 2008–05–18 R1"). AD 2008–05–18 R1 applied to certain Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 airplanes. The NPRM published in the **Federal Register** on January 4, 2016 (81 FR 38) ("the NPRM"). The NPRM was prompted by the issuance of revised service information to update the Fuel ALIs and CDCCLs that address fuel tank system ignition sources. The NPRM proposed to retain the requirements of AD 2008–05–18 R1, and require a new maintenance or inspection program revision to incorporate the revised ALIs and CDCCLs. The NPRM also proposed to add certain airplanes to the applicability. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0029, dated February 24, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on all Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 airplanes. The MCAI states:

> * * * [T]he FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 design in response to these regulations identified a number of Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) items to prevent the development of unsafe conditions within the fuel system.
>
> To introduce these Fuel ALI and CDCCL items, Fokker Services published Service Bulletin (SB) F27/28–070. Consequently, EASA issued AD 2006–0207, requiring the implementation of these Fuel ALI and CDCCL items. That [EASA] AD was later revised to make reference to SBF27–28–070R1 and to specify that the use of later SB revisions was acceptable.
>
> In 2014, Fokker Services issued Revision 2 of SBF27–28–070 to update the Fuel ALI and CDCCL items and to consolidate Fuel ALI and CDCCL items contained in a number of other SBs. Consequently, EASA issued AD 2014–0105, superseding AD 2006–0207R1 and requiring the implementation of the updated Fuel ALI and CDCCL items.
>
> Since that [EASA] AD was issued, Fokker Services issued Revision 3 of SBF27–28–070, primarily to introduce 2 additional CDCCL items.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2014–0105, which is superseded, and requires implementation of the updated Fuel ALI and CDCCL items.
>
> More information on this subject can be found in Fokker Services All Operators Message AOF27.043#05.

The unsafe condition is the potential of ignition sources inside fuel tanks. Such ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–8137.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Service Bulletin SBF27–28–070, Revision 3, dated December 11, 2014. The service information describes tasks for revising the maintenance or inspection program to update the fuel ALIs and CDCCLs that address fuel tank system ignition sources. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 16 airplanes of U.S. registry.

The actions that are required by AD 2008–05–18 R1 take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions required by AD 2008–05–18 R1 is $85 per product.

We also estimate that it takes about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,360, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–05–18 R1, Amendment 39–16083 (74 FR 57402, November 6, 2009), and adding the following new AD:

2016–12–12 Fokker Services B.V.: Amendment 39–18561. Docket No. FAA–2015–8137; Directorate Identifier 2014–NM–104–AD.

(a) Effective Date

This AD becomes effective July 22, 2016.

(b) Affected ADs

This AD replaces AD 2008–05–18 R1, Amendment 39–16083 (74 FR 57402, November 6, 2009) ("AD 2008–05–18 R1").

(c) Applicability

This AD applies to Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by the issuance of revised service information to update the Fuel Airworthiness Limitation Items (ALIs) and critical design configuration control limitations (CDCCLs) that address fuel tank system ignition sources. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness To Incorporate Limits (Inspections, Thresholds, and Intervals), With Revised Table Reference

This paragraph restates the actions required by paragraph (f)(1) of AD 2008–05–18 R1, with revised table reference. For Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 airplanes, serial numbers 10102 through 10692 inclusive: Within 3 months after April 16, 2008 (the effective date of AD 2008–05–18, Amendment 39–15412 (73 FR 13071, March 12, 2008)), revise the ALS of the Instructions for Continued Airworthiness to incorporate the limits (inspections, thresholds, and intervals) specified in Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF27–28–070, Revision 1, dated January 8, 2008; as applicable. For all tasks identified in Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF27–28–070, Revision 1, dated January 8, 2008; the initial compliance times are as specified in Table 1 to paragraph (g) of this AD, as applicable. The repetitive inspections must be accomplished thereafter at the intervals specified in Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF27–28–070, Revision 1, dated January 8, 2008; as applicable, except as provided by paragraphs (i) and (n)(1) of this AD.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—INITIAL COMPLIANCE TIMES FOR ALS REVISION

For—	The later of—
Model F.27 Mark 050 airplanes: Task 280000–01	102 months after April 16, 2008 (the effective date of AD 2008–05–18, Amendment 39–15412 (73 FR 13071, March 12, 2008)); or 102 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.
Model F.27 Mark 050 airplanes: Task 280000–02	30 months after April 16, 2008 (the effective date of AD 2008–05–18, Amendment 39–15412 (73 FR 13071, March 12, 2008)); or 30 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.
Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes: Task 280000–01.	78 months after April 16, 2008 (the effective date of AD 2008–05–18, Amendment 39–15412 (73 FR 13071, March 12, 2008)); or 78 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.
Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes: Task 280000–02.	18 months after April 16, 2008 (the effective date of AD 2008–05–18, Amendment 39–15412 (73 FR 13071, March 12, 2008)); or 18 months after the date of issuance of the original Dutch standard airworthiness certificate or the date of issuance of the original Dutch export certificate of airworthiness.

(h) Retained Revision of the ALS of the Instructions for Continued Airworthiness To Incorporate CDCCLs, With No Changes

This paragraph restates the actions required by paragraph (f)(2) of AD 2008–05–18 R1, with no changes. For Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 airplanes, serial numbers 10102 through 10692 inclusive: Within 3 months after April 16, 2008 (the effective date of AD 2008–05–18, Amendment 39–15412 (73 FR 13071, March 12, 2008)), revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Fokker 50/60 Fuel Airworthiness Limitations Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF27–28–070, Revision 1, dated January 8, 2008; as applicable.

(i) Retained Exceptional Short-Term Extensions Provision, With No Changes

This paragraph restates the exceptional short-term extensions provision specified in paragraph (f)(3) of AD 2008–05–18 R1, with no changes. Where Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF27–28–070, Revision 1, dated January 8, 2008; as applicable; allow for exceptional short-term extensions, an exception is acceptable to the FAA if it is approved by the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(j) Retained No Alternative Actions, Intervals, and/or CDCCLs, With New Exception

This paragraph restates the requirement specified in paragraph (f)(4) of AD 2008–05–18 R1, with a new exception. Except as required by paragraph (l) of this AD, after accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used, unless the inspections, inspection intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (n)(1) of this AD.

(k) Retained Credit for Previous Actions, With No Changes

This paragraph restates the credit provided in paragraph (f)(5) of AD 2008–05–18 R1, with no changes. Actions done before April 16, 2008 (the effective date of AD 2008–05–18, Amendment 39–15412 (73 FR 13071, March 12, 2008)), in accordance with Fokker 50/60 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–671, Issue 1, dated January 31, 2006; and Fokker Service Bulletin SBF27/28–070, dated June 30, 2006; are acceptable for compliance with the corresponding requirements of this AD.

(l) New Requirements of This AD: Revise the Maintenance or Inspection Program

For Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes: Within 3 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, by incorporating the Fuel ALIs and CDCCLs identified in the Accomplishment Instructions of Fokker Service Bulletin SBF27–28–070, Revision 3, dated December 11, 2014. Accomplishing the actions required by this paragraph ends the requirements specified in paragraphs (g) and (h) of this AD for that airplane. The initial compliance time for the Fuel ALIs identified in Fokker Service Bulletin SBF27–28–070, Revision 3, dated December 11, 2014, is at the initial compliance time specified in Fokker Service Bulletin SBF27–28–070, Revision 3, dated December 11, 2014, or within 3 months after the effective date of this AD, whichever occurs later.

(m) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (l) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used; unless the actions, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (n)(1) of this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0029, dated February 24, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8137.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 22, 2016.

(i) Fokker Service Bulletin SBF27–28–070, Revision 3, dated December 11, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on September 16, 2011 (76 FR 50111, August 12, 2011).

(i) Fokker Service Bulletin SBF27–28–070, Revision 1, dated January 8, 2008.

(ii) Reserved.

(5) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14130 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–0021; Airspace Docket No. 16–ANM–1]

Amendment of Class E Airspace; Ogden-Hinckley, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace designated as an extension to the Class D surface area at Ogden-Hinckley Airport, Ogden, UT. The FAA's Aeronautical Information Services identified that the width of the Class E extension to the Class D surface area did not meet the current criteria. This action redefines the controlled airspace area and enhances the safety and management of Standard Instrument Approach Procedures for Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Ogden-Hinckley Airport, Ogden, UT.

History

On March 1, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class E airspace designated as an extension to a Class D surface area airspace at Ogden-Hinckley Airport, Ogden, UT. (81 FR 10551) Docket FAA–2016–0021. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

The legal description language was changed slightly from that contained in the NPRM to add clarity however, no changes to the lateral or horizontal dimensions of the airspace have occurred.

Class E airspace designations are published in paragraph 6004 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies the Class E airspace designated as an extension to the Class D surface area. The airspace would be expanded to 4 miles either side of the 225° radial extending 16 miles southwest of Ogden-Hinckley airport, Ogden, UT. The FAA found this action necessary for the safety and management of aircraft departing and arriving under IFR operations at the airport. Class E airspace designations are published in paragraph 6004 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM UT E4 Ogden-Hinckley Airport, UT [Modified]

Ogden-Hinckley Airport, UT
(Lat. 41°11′44″ N., long. 112°00′47″ W.)
Hill AFB, UT
(Lat. 41°07′26″ N., long. 111°58′23″ W.)

That airspace extending upward from the surface within the area bounded by a line 4 miles northwest and parallel to the 225° radial of Ogden-Hinckley Airport, extending from the 4.3-mile radius to 16 miles southwest of the airport, thence to lat. 40°57′3″ N., long. 112°12′44″ W., thence to lat. 41°10′59″ N., long. 111°54′31″ W., thence to the point of beginning.

Issued in Seattle, Washington, on June 2, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–14105 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31078; Amdt. No. 3697]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 17, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 17, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff

Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, andsafety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on May 20, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 June 2016

Kokomo, IN, Kokomo Muni, ILS OF LOC RWY 23, Amdt 10B
Kokomo, IN, Kokomo Muni, RNAV (GPS) RWY 5, Amdt 1
Kokomo, IN, Kokomo Muni, RNAV (GPS) RWY 14, Orig-B
Kokomo, IN, Kokomo Muni, RNAV (GPS) RWY 23, Amdt 1B
Kokomo, IN, Kokomo Muni, RNAV (GPS) RWY 32, Orig-B
Kokomo, IN, Kokomo Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Park Rapids, MN, Park Rapids Muni-Konshok Field, ILS OR LOC RWY 31, Amdt 1D
Park Rapids, MN, Park Rapids Muni-Konshok Field, RNAV (GPS) RWY 13, Orig-B
Park Rapids, MN, Park Rapids Muni-Konshok Field, RNAV (GPS) RWY 31, Orig-B
Park Rapids, MN, Park Rapids Muni-Konshok Field, Takeoff Minimums and Obstacle DP, Amdt 1
Park Rapids, MN, Park Rapids Muni-Konshok Field, VOR RWY 13, Amdt 9B
Picayune, MS, Picayune Muni, RNAV (GPS) RWY 36, Amdt 2
Picayune, MS, Picayune Muni, RNAV (GPS) Y RWY 18, Orig
Picayune, MS, Picayune Muni, RNAV (GPS) Z RWY 18, Amdt 2
Picayune, MS, Picayune Muni, VOR–A, Amdt 1
Sallisaw, OK, Sallisaw Muni, NDB–A, Amdt 2, CANCELED
Fond Du Lac, WI, Fond Du Lac County, LOC RWY 36, Amdt 1
Fond Du Lac, WI, Fond Du Lac County, RNAV (GPS) RWY 18, Orig
Fond Du Lac, WI, Fond Du Lac County, RNAV (GPS) RWY 36, Amdt 1
Fond Du Lac, WI, Fond Du Lac County, VOR RWY 18, Amdt 7

Effective 21 July 2016

Kiana, AK, Bob Baker Memorial, RNAV (GPS) RWY 6, Orig-C
Unalaska, AK, Unalaska, GPS–E, Orig, CANCELED
Unalaska, AK, Unalaska, NDB–A, Amdt 3
Unalaska, AK, Unalaska, RNAV (GPS)-B, Orig
Leadville, CO, Lake County, LOZUL THREE Graphic DP
Sandpoint, ID, Sandpoint, LOC–A, Amdt 2
Sandpoint, ID, Sandpoint, RNAV (GPS)-B, Amdt 1
Sandpoint, ID, Sandpoint, Takeoff Minimums and Obstacle DP, Amdt 1
Fryeburg, ME, Eastern Slopes Rgnl, NDB RWY 32, Orig, CANCELED
Fryeburg, ME, Eastern Slopes Rgnl, NDB–B, Amdt 2, CANCELED
Winnemucca, NV, Winnemucca Muni, VOR RWY 14, Orig-B
New York, NY, John F Kennedy Intl, RNAV (GPS) Z RWY 13R, Orig, CANCELED
Rochester, NY, Greater Rochester Intl, ILS OR LOC RWY 22, Amdt 8B
Rochester, NY, Greater Rochester Intl, ILS OR LOC RWY 28, Amdt 32
Waverly, TN, Humphreys County, VOR/DME OR GPS–A, Amdt 2C, CANCELED
Delta, UT, Delta Muni, Takeoff Minimums and Obstacle DP, Orig-A
Jackson, WY, Jackson Hole, GEYSER FIVE Graphic DP

[FR Doc. 2016–14165 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31079 Amdt. No. 3698]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 17, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on May 20, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jun–16	TX	Eagle Pass	Maverick County Memorial Intl.	5/3181	04/27/16	This NOTAM, published in TL 16–13, is hereby rescinded in its entirety.
23–Jun–16	MO	Macon	Macon-Fower Memorial	6/4284	04/27/16	This NOTAM, published in TL 16–13, is hereby rescinded in its entirety.
23–Jun–16	CO	Steamboat Springs	Steamboat Springs/Bob Adams Field.	6/5725	04/18/16	This NOTAM, published in TL 16–13, is hereby rescinded in its entirety.
23–Jun–16	NV	Reno	Reno/Tahoe Intl	5/1845	5/10/16	RNAV (RNP) Y RWY 16R, Amdt 1A.
23–Jun–16	NV	Reno	Reno/Tahoe Intl	5/1846	5/10/16	RNAV (GPS) X RWY 16L, Amdt 1B.
23–Jun–16	NV	Reno	Reno/Tahoe Intl	5/1847	5/10/16	RNAV (GPS) X RWY 16R, Amdt 1B.
23–Jun–16	NV	Reno	Reno/Tahoe Intl	5/1849	5/10/16	RNAV (RNP) Z RWY 16R, Amdt 1.
23–Jun–16	NV	Reno	Reno/Tahoe Intl	5/1852	5/10/16	RNAV (RNP) Z RWY 16L, Amdt 1.
23–Jun–16	NV	Reno	Reno/Tahoe Intl	5/1853	5/10/16	RNAV (RNP) Y RWY 16L, Amdt 1.
23–Jun–16	WV	Huntington	Tri-State/Milton J Ferguson Field.	5/6941	5/5/16	RADAR 1, Amdt 8.
23–Jun–16	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	5/7613	5/10/16	RNAV (GPS) RWY 31, Amdt 1.
23–Jun–16	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	5/7615	5/10/16	ILS or LOC RWY 13, Amdt 2.
23–Jun–16	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	5/7616	5/10/16	VOR RWY 18, Amdt 10D.
23–Jun–16	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	5/7617	5/10/16	RNAV (GPS) RWY 36, Amdt 1.
23–Jun–16	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	5/7618	5/10/16	RNAV (GPS) RWY 13, Amdt 1.
23–Jun–16	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	5/7620	5/10/16	RNAV (GPS) RWY 18, Amdt 1.
23–Jun–16	TX	George West	Live Oak County	5/7676	5/3/16	Takeoff Minimums and (Obstacle) DP, Orig.
23–Jun–16	IA	Cedar Rapids	The Eastern Iowa	6/0235	5/3/16	ILS or LOC RWY 9, Amdt 18A.
23–Jun–16	IL	Springfield	Abraham Lincoln Capital	6/0849	5/5/16	ILS or LOC RWY 4, Amdt 25F.
23–Jun–16	IL	Springfield	Abraham Lincoln Capital	6/0850	5/5/16	VOR/DME RWY 4, Orig-A.
23–Jun–16	SD	Pierre	Pierre Rgnl	6/1114		VOR/DME or TACAN RWY 7, Amdt 5A.
23–Jun–16	CA	Columbia	Columbia	6/1224	5/3/16	RNAV (GPS) RWY 35, Orig.
23–Jun–16	IN	Shelbyville	Shelbyville Muni	6/2105	5/3/16	RNAV (GPS) RWY 19, Amdt 1.
23–Jun–16	IN	Shelbyville	Shelbyville Muni	6/2108	5/3/16	RNAV (GPS) RWY 1, Amdt 1.
23–Jun–16	IN	Indianapolis	Eagle Creek Airpark	6/2258	5/10/16	LOC RWY 21, Amdt 4.
23–Jun–16	IN	Indianapolis	Eagle Creek Airpark	6/2259	5/10/16	RNAV (GPS) RWY 21, Amdt 1.
23–Jun–16	MN	Warroad	Warroad Intl Memorial	6/2264	5/10/16	Takeoff Minimums and (Obstacle) DP, Orig.
23–Jun–16	MN	Warroad	Warroad Intl Memorial	6/2266	5/10/16	ILS or LOC RWY 31, Amdt 1A.
23–Jun–16	MN	Warroad	Warroad Intl Memorial	6/2268	5/10/16	NDB RWY 31, Amdt 2.
23–Jun–16	TX	Jasper	Jasper County-Bell Field	6/2428	5/10/16	RNAV (GPS) RWY 36, Orig-A.
23–Jun–16	AL	Decatur	Pryor Field Rgnl	6/2950	5/10/16	ILS Z or LOC Z RWY 18, Amdt 1.
23–Jun–16	OK	Oklahoma City	Sundance Airpark	6/3722	4/27/16	Takeoff Minimums and (Obstacle) DP, Amdt 1.
23–Jun–16	MO	Lamar	Lamar Muni	6/4071	5/10/16	RNAV (GPS) RWY 3, Amdt 1.
23–Jun–16	TX	Dallas	Collin County Rgnl at McKinney.	6/4225	4/27/16	ILS or LOC RWY 18, Amdt 5A.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jun–16	TX	Dallas	Collin County Rgnl at McKinney.	6/4227	4/27/16	RNAV (GPS) RWY 18, Amdt 2A.
23–Jun–16	TX	Dallas	Collin County Rgnl at McKinney.	6/4229	4/27/16	RNAV (GPS) RWY 36, Amdt 3A.
23–Jun–16	TX	Dallas	Collin County Rgnl at McKinney.	6/4230	5/10/16	VOR/DME–A, Amdt 2.
23–Jun–16	TX	Dallas	Collin County Rgnl at McKinney.	6/4235	4/27/16	Takeoff Minimums and (Obstacle) DP, Amdt 2.
23–Jun–16	KS	Russell	Russell Muni	6/4618	5/3/16	RNAV (GPS) RWY 17, Orig.
23–Jun–16	MI	Davison	Athelone Williams Memorial.	6/4656	5/3/16	VOR RWY 8, Orig-C.
23–Jun–16	OH	Akron	Akron-Canton Rgnl	6/4659	5/5/16	RNAV (GPS) RWY 23, Orig.
23–Jun–16	TX	Denton	Denton Muni	6/4725	4/27/16	ILS or LOC RWY 18, Amdt 9A.
23–Jun–16	TX	Denton	Denton Muni	6/4726	4/27/16	NDB RWY 18, Amdt 7A.
23–Jun–16	TX	Denton	Denton Muni	6/4727	4/27/16	RNAV (GPS) RWY 18, Orig-A.
23–Jun–16	TX	Denton	Denton Muni	6/4728	4/27/16	RNAV (GPS) RWY 36, Amdt 2A.
23–Jun–16	TX	Denton	Denton Muni	6/4729	4/27/16	Takeoff Minimums and (Obstacle) DP, Amdt 3.
23–Jun–16	TX	Panhandle	Panhandle-Carson County.	6/4855	5/5/16	VOR–A, Orig-A.
23–Jun–16	OH	Norwalk	Norwalk-Huron County	6/4884	5/3/16	RNAV (GPS) RWY 28, Orig.
23–Jun–16	WI	La Crosse	La Crosse Rgnl	6/4885	5/5/16	RNAV (GPS) RWY 31, Orig-B.
23–Jun–16	TX	Beaumont/Port Arthur	Jack Brooks Rgnl	6/5048	5/5/16	VOR RWY 12, Amdt 9C.
23–Jun–16	FL	Tampa	Tampa Intl	6/5585	5/3/16	ILS or LOC RWY 19R, Amdt 5B.
23–Jun–16	KY	Williamsburg	Williamsburg-Whitley County.	6/5990	5/3/16	LOC/DME RWY 20, Orig-A.
23–Jun–16	KY	Williamsburg	Williamsburg-Whitley County.	6/5991	5/3/16	VOR/DME RWY 20, Orig-B.
23–Jun–16	TX	Fort Worth	Bourland Field	6/6092	5/10/16	RNAV (GPS) RWY 17, Orig.
23–Jun–16	TX	Fort Worth	Bourland Field	6/6093	5/10/16	VOR/DME–A, Orig-B.
23–Jun–16	AR	Monticello	Monticello Muni/Ellis Field.	6/6300	5/3/16	Takeoff Minimums and (Obstacle) DP, Orig.
23–Jun–16	AL	Tuscaloosa	Tuscaloosa Rgnl	6/6366	5/10/16	RNAV (GPS) RWY 30, Orig-B.
23–Jun–16	KY	Frankfort	Capital City	6/7004	5/5/16	VOR RWY 25, Amdt 3B.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7023	5/10/16	ILS or LOC RWY 17R, Amdt 12.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7024	5/10/16	ILS or LOC RWY 17L, Amdt 3.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7025	5/10/16	ILS or LOC/DME RWY 35L, Amdt 2.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7027	5/10/16	RNAV (RNP) Z RWY 17L, Amdt 3.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7029	5/10/16	RNAV (RNP) Z RWY 17R, Amdt 1.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7030	5/10/16	RNAV (RNP) Z RWY 35L, Amdt 1.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7031	5/10/16	RNAV (RNP) Z RWY 35R, Amdt 2.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7032	5/10/16	RNAV (GPS) Y RWY 17L, Amdt 3.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7033	5/10/16	RNAV (GPS) Y RWY 17R, Amdt 4.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7034	5/10/16	RNAV (GPS) Y RWY 35R, Amdt 3.
23–Jun–16	AR	Mountain Home	Baxter County	6/7037	5/3/16	VOR–A, Amdt 10.
23–Jun–16	AR	Mountain Home	Baxter County	6/7038	5/3/16	ILS or LOC/DME RWY 5, Orig-A.
23–Jun–16	AR	Mountain Home	Baxter County	6/7039	5/3/16	RNAV (GPS) RWY 5, Orig-A.
23–Jun–16	IN	Washington	Daviess County	6/7040	5/3/16	RNAV (GPS) RWY 18, Amdt 1.
23–Jun–16	NM	Hobbs	Lea County Rgnl	6/7041	5/5/16	VOR/DME or TACAN RWY 21, Amdt 9A.
23–Jun–16	OR	Prineville	Prineville	6/7869	5/10/16	Takeoff Minimums and (Obstacle) DP, Amdt 2.
23–Jun–16	OK	Oklahoma City	Will Rogers World	6/7940	5/10/16	ILS or LOC/DME RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II), Amdt 10.
23–Jun–16	IN	Shelbyville	Shelbyville Muni	6/7997	5/3/16	VOR RWY 19, Amdt 1.
23–Jun–16	SD	Sioux Falls	Joe Foss Field	6/8827	5/5/16	RNAV (GPS) RWY 27, Orig-C.
23–Jun–16	SD	Sioux Falls	Joe Foss Field	6/8828	5/5/16	RNAV (GPS) RWY 9, Orig-.
23–Jun–16	TX	Albany	Albany Muni	6/8829	5/5/16	RNAV (GPS) RWY 17, Amdt 1.
23–Jun–16	TX	Albany	Albany Muni	6/8830	5/5/16	RNAV (GPS) RWY 35, Amdt 1.
23–Jun–16	TX	Comanche	Comanche County-City	6/8831	5/5/16	RNAV (GPS) RWY 17, Amdt 1.
23–Jun–16	MN	Bemidji	Bemidji Rgnl	6/8832	5/3/16	RNAV (GPS) RWY 13, Amdt 1.
23–Jun–16	MN	Bemidji	Bemidji Rgnl	6/8833	5/3/16	VOR/DME RWY 13, Amdt 1.
23–Jun–16	AL	Muscle Shoals	Northwest Alabama Rgnl.	6/8834	5/10/16	ILS Z or LOC/DME Z RWY 29, Amdt 6.
23–Jun–16	AL	Muscle Shoals	Northwest Alabama Rgnl.	6/8836	5/10/16	ILS Y or LOC/DME Y RWY 29, Orig.
23–Jun–16	AL	Muscle Shoals	Northwest Alabama Rgnl.	6/8837	5/10/16	RNAV (GPS) RWY 29, Amdt 2.
23–Jun–16	AL	Muscle Shoals	Northwest Alabama Rgnl.	6/8838	5/10/16	RNAV (GPS) RWY 11, Amdt 2.
23–Jun–16	AL	Muscle Shoals	Northwest Alabama Rgnl.	6/8839	5/10/16	RNAV (GPS) RWY 18, Amdt 1.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jun–16	AL	Muscle Shoals	Northwest Alabama Rgnl.	6/8841	5/10/16	RNAV (GPS) RWY 36, Amdt 1.
23–Jun–16	MO	Warsaw	Warsaw Muni	6/9693	5/3/16	RNAV (GPS) RWY 18, Orig.
23–Jun–16	MO	Warsaw	Warsaw Muni	6/9694	5/3/16	RNAV (GPS) RWY 36, Orig.
23–Jun–16	OH	Phillipsburg	Phillipsburg	6/9746	5/3/16	VOR or GPS RWY 21, Amdt 3.
23–Jun–16	OK	Prague	Prague Muni	6/9929	5/10/16	RNAV (GPS) RWY 17, Orig.
23–Jun–16	FL	Pensacola	Pensacola Intl	6/9932	5/10/16	RNAV (GPS) RWY 8, Amdt 2B.
23–Jun–16	FL	Pensacola	Pensacola Intl	6/9933	5/10/16	RNAV (GPS) RWY 26, Amdt 2B.
23–Jun–16	FL	Pensacola	Pensacola Intl	6/9934	5/10/16	RNAV (GPS) RWY 35, Amdt 2B

[FR Doc. 2016–14134 Filed 6–16–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31081 Amdt. No. 3700]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 17, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 3, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
21–Jul–16	NE	Hartington	Hartington Muni/Bud Becker Fld.	5/1981	5/12/16	RNAV (GPS) RWY 13, Orig-A
21–Jul–16	AK	Soldotna	Soldotna	5/7521	5/12/16	RNAV (GPS) RWY 25, Amdt 1B
21–Jul–16	AK	Soldotna	Soldotna	5/7522	5/12/16	RNAV (GPS) RWY 7, Orig-D
21–Jul–16	AK	Soldotna	Soldotna	5/7523	5/12/16	NDB RWY 25, Amdt 3C
21–Jul–16	AK	Soldotna	Soldotna	5/7524	5/12/16	NDB RWY 7, Amdt 2D
21–Jul–16	AK	Soldotna	Soldotna	5/7525	5/12/16	VOR/DME–A, Amdt 7E
21–Jul–16	WA	Moses Lake	Grant Co Intl	5/9980	5/12/16	RNAV (RNP) Z RWY 32R, Orig
21–Jul–16	WA	Moses Lake	Grant Co Intl	5/9982	5/12/16	RNAV (RNP) Z RWY 4, Orig
21–Jul–16	WA	Moses Lake	Grant Co Intl	5/9983	5/12/16	RNAV (GPS) Y RWY 32R, Amdt 3
21–Jul–16	WA	Moses Lake	Grant Co Intl	5/9984	5/12/16	RNAV (GPS) Y RWY 4, Amdt 1A
21–Jul–16	IN	New Castle	New Castle-Henry Co Muni.	6/0227	5/23/16	VOR RWY 27, Amdt 10
21–Jul–16	IN	New Castle	New Castle-Henry Co Muni.	6/0229	5/23/16	RNAV (GPS) RWY 9, Orig
21–Jul–16	IN	New Castle	New Castle-Henry Co Muni.	6/0230	5/23/16	RNAV (GPS) RWY 27, Orig
21–Jul–16	OK	Watonga	Watonga Rgnl	6/1113	5/24/16	VOR/DME–A, Amdt 3
21–Jul–16	OK	Watonga	Watonga Rgnl	6/1115	5/24/16	RNAV (GPS) RWY 17, Orig
21–Jul–16	AK	Dillingham	Dillingham	6/1127	5/12/16	RNAV (GPS) RWY 19, Amdt 2D
21–Jul–16	MO	Camdenton	Camdenton Memorial-Lake Rgnl.	6/1225	5/12/16	RNAV (GPS) RWY 33, Amdt 1A
21–Jul–16	MN	Springfield	Springfield Muni	6/1264	5/23/16	RNAV (GPS) RWY 31, Orig-A
21–Jul–16	CO	Steamboat Springs	Steamboat Springs/Bob Adams Field.	6/1595	5/24/16	RNAV (GPS)-E, Orig
21–Jul–16	NE	Omaha	Eppley Airfield	6/2018	5/24/16	RNAV (RNP) Z RWY 14R, Orig
21–Jul–16	NE	Omaha	Eppley Airfield	6/2019	5/24/16	RNAV (RNP) Z RWY 36, Orig
21–Jul–16	NE	Omaha	Eppley Airfield	6/2020	5/24/16	RNAV (RNP) Z RWY 32L, Orig
21–Jul–16	NE	Omaha	Eppley Airfield	6/2022	5/24/16	RNAV (RNP) Z RWY 18, Orig
21–Jul–16	MN	Springfield	Springfield Muni	6/2052	5/23/16	RNAV (GPS) RWY 13, Orig-A
21–Jul–16	IN	Wabash	Wabash Muni	6/2057	5/24/16	RNAV (GPS) RWY 9, Orig
21–Jul–16	IN	Wabash	Wabash Muni	6/2058	5/24/16	RNAV (GPS) RWY 27, Orig
21–Jul–16	NM	Lovington	Lea County-Zip Franklin Memorial.	6/2074	5/23/16	RNAV (GPS) RWY 3, Amdt 1
21–Jul–16	NM	Lovington	Lea County-Zip Franklin Memorial.	6/2086	5/23/16	RNAV (GPS) RWY 21, Amdt 1
21–Jul–16	IL	Vandalia	Vandalia Muni	6/2147	5/23/16	VOR RWY 18, Amdt 12
21–Jul–16	TN	Covington	Covington Muni	6/2153	5/24/16	RNAV (GPS) RWY 1, Orig-A
21–Jul–16	AK	Wasilla	Wasilla	6/2275	5/25/16	Takeoff Minimums and (Obstacle) DP, Amdt 2
21–Jul–16	WY	Riverton	Riverton Rgnl	6/2276	5/23/16	VOR RWY 28, Amdt 10
21–Jul–16	WY	Riverton	Riverton Rgnl	6/2277	5/23/16	ILS or LOC RWY 28, Amdt 3
21–Jul–16	WY	Riverton	Riverton Rgnl	6/2278	5/23/16	RNAV (GPS) RWY 10, Amdt 2
21–Jul–16	WY	Riverton	Riverton Rgnl	6/2279	5/23/16	RNAV (GPS) RWY 28, Amdt 1

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
21–Jul–16	WY	Riverton	Riverton Rgnl	6/2291	5/23/16	VOR RWY 10, Amdt 10
21–Jul–16	NM	Hobbs	Lea County Rgnl	6/2634	5/23/16	RNAV (GPS) RWY 3, Amdt 2
21–Jul–16	NM	Hobbs	Lea County Rgnl	6/2635	5/23/16	RNAV (GPS) RWY 21, Amdt 1
21–Jul–16	NM	Hobbs	Lea County Rgnl	6/2638	5/23/16	RNAV (GPS) RWY 30, Amdt 1
21–Jul–16	MI	Traverse City	Cherry Capital	6/2641	5/12/16	RNAV (GPS) RWY 36, Orig
21–Jul–16	MI	Traverse City	Cherry Capital	6/2642	5/12/16	RNAV (GPS) RWY 28, Orig
21–Jul–16	OH	Jackson	James A Rhodes	6/2677	5/12/16	RNAV (GPS) RWY 1, Amdt 1C
21–Jul–16	KS	Emporia	Emporia Muni	6/2732	5/24/16	Takeoff Minimums and (Obstacle) DP, Orig
21–Jul–16	MO	Mexico	Mexico Memorial	6/2743	5/12/16	VOR/DME RWY 24, Amdt 2A
21–Jul–16	MO	Mexico	Mexico Memorial	6/2745	5/12/16	LOC/DME RWY 24, Amdt 1B
21–Jul–16	MO	Mexico	Mexico Memorial	6/2746	5/12/16	RNAV (GPS) RWY 6, Amdt 1A
21–Jul–16	TX	Dallas	Dallas Love Field	6/2873	5/12/16	ILS or LOC RWY 31R, ILS RWY 31R (SA CAT I), Amdt 6
21–Jul–16	OK	Tulsa	Tulsa Intl	6/2897	5/24/16	ILS or LOC RWY 36R, ILS RWY 36R (SA CAT I), ILS RWY 36R (CAT II), Amdt 29E
21–Jul–16	NM	Artesia	Artesia Muni	6/2916	5/23/16	RNAV (GPS) RWY 21, Amdt 1
21–Jul–16	NM	Artesia	Artesia Muni	6/2917	5/23/16	RNAV (GPS) RWY 30, Amdt 1
21–Jul–16	NM	Artesia	Artesia Muni	6/2918	5/23/16	RNAV (GPS) RWY 12, Amdt 1
21–Jul–16	MN	Crookston	Crookston Muni Kirkwood Fld.	6/2922	5/23/16	VOR/DME RWY 13, Orig
21–Jul–16	CO	Akron	Colorado Plains Rgnl	6/2981	5/23/16	RNAV (GPS) RWY 11, Amdt 1
21–Jul–16	CO	Akron	Colorado Plains Rgnl	6/2982	5/23/16	VOR RWY 29, Orig-A
21–Jul–16	MN	Orr	Orr Rgnl	6/3104	5/24/16	RNAV (GPS) RWY 13, Orig-B
21–Jul–16	MN	Orr	Orr Rgnl	6/3105	5/24/16	NDB RWY 13, Amdt 8B
21–Jul–16	WV	Fairmont	Fairmont Muni-Frankman Field.	6/3158	5/24/16	RNAV (GPS) RWY 23, Amdt 1
21–Jul–16	IA	Newton	Newton Muni	6/3255	5/25/16	ILS or LOC RWY 32, Amdt 2
21–Jul–16	IA	Newton	Newton Muni	6/3256	5/25/16	RNAV (GPS) RWY 14, Amdt 1
21–Jul–16	IA	Newton	Newton Muni	6/3257	5/25/16	RNAV (GPS) RWY 32, Orig-A
21–Jul–16	IA	Newton	Newton Muni	6/3260	5/25/16	VOR RWY 14, Amdt 9
21–Jul–16	IA	Newton	Newton Muni	6/3261	5/25/16	Takeoff Minimums and (Obstacle) DP, Orig
21–Jul–16	OK	Tulsa	Richard Lloyd Jones Jr	6/3451	5/24/16	RNAV (GPS) RWY 19R, Orig
21–Jul–16	FL	Palm Coast	Flagler County	6/3500	5/24/16	RNAV (GPS) RWY 6, Amdt 1C
21–Jul–16	FL	Palm Coast	Flagler County	6/3503	5/24/16	RNAV (GPS) RWY 11, Amdt 1B
21–Jul–16	FL	Palm Coast	Flagler County	6/3505	5/24/16	RNAV (GPS) RWY 24, Orig-D
21–Jul–16	FL	Palm Coast	Flagler County	6/3507	5/24/16	RNAV (GPS) RWY 29, Orig-D
21–Jul–16	WI	Boyceville	Boyceville Muni	6/3660	5/24/16	RNAV (GPS) RWY 8, Amdt 1A
21–Jul–16	OH	Toledo	Toledo Executive	6/4055	5/25/16	VOR RWY 4, Amdt 9C
21–Jul–16	AR	Rogers	Rogers Executive—Carter Field.	6/4083	5/25/16	ILS or LOC RWY 20, Amdt 3B
21–Jul–16	AR	Rogers	Rogers Executive—Carter Field.	6/4085	5/25/16	RNAV (GPS) RWY 2, Orig
21–Jul–16	AR	Rogers	Rogers Executive—Carter Field.	6/4086	5/25/16	Takeoff Minimums and (Obstacle) DP, Orig-A
21–Jul–16	AR	Rogers	Rogers Executive—Carter Field.	6/4087	5/25/16	VOR RWY 2, Amdt 13C
21–Jul–16	AR	Rogers	Rogers Executive—Carter Field.	6/4088	5/25/16	RNAV (GPS) RWY 20, Amdt 1
21–Jul–16	OH	Ashland	Ashland County	6/4188	5/23/16	RNAV (GPS) RWY 19, Orig-C
21–Jul–16	WI	Oshkosh	Wittman Rgnl	6/4428	5/12/16	VOR RWY 9, Amdt 10A
21–Jul–16	WI	Oshkosh	Wittman Rgnl	6/4429	5/12/16	VOR RWY 18, Amdt 8A
21–Jul–16	WI	Oshkosh	Wittman Rgnl	6/4430	5/12/16	ILS or LOC RWY 36, Amdt 7A
21–Jul–16	TN	Waverly	Humphreys County	6/4576	5/25/16	RNAV (GPS) RWY 3, Orig
21–Jul–16	TN	Waverly	Humphreys County	6/4580	5/25/16	RNAV (GPS) RWY 21, Orig
21–Jul–16	TX	Mineola/Quitman	Wood County	6/4724	5/12/16	RNAV (GPS) RWY 36, Orig-A
21–Jul–16	TN	Chattanooga	Lovell Field	6/4738	5/24/16	RNAV (GPS) RWY 33, Orig-A
21–Jul–16	TN	Chattanooga	Lovell Field	6/4740	5/24/16	RNAV (GPS) RWY 15, Orig-A
21–Jul–16	MN	Preston	Fillmore County	6/4920	5/23/16	RNAV (GPS) RWY 29, Amdt 1A
21–Jul–16	MN	Preston	Fillmore County	6/4921	5/23/16	RNAV (GPS) RWY 11, Orig-A
21–Jul–16	OH	Dayton	Dayton-Wright Brothers	6/5685	5/24/16	Takeoff Minimums and (Obstacle) DP, Amdt 3
21–Jul–16	NM	Silver City	Grant County	6/5861	5/23/16	LOC/DME RWY 26, Amdt 5B
21–Jul–16	NM	Silver City	Grant County	6/5862	5/23/16	VOR–A, Amdt 7B
21–Jul–16	AL	Birmingham	Birmingham-Shuttlesworth Intl.	6/5888	5/12/16	ILS or LOC/DME RWY 24, Amdt 3
21–Jul–16	OH	Wooster	Wayne County	6/6086	5/24/16	RNAV (GPS) RWY 28, Orig-A
21–Jul–16	GA	Atlanta	Dekalb-Peachtree	6/6380	5/12/16	RNAV (GPS) Y RWY 21L, Amdt 1B
21–Jul–16	MO	Trenton	Trenton Muni	6/6403	5/12/16	RNAV (GPS) RWY 18, Orig-A

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
21–Jul–16	VA	Roanoke	Roanoke-Blacksburg Rgnl/Woodrum Field.	6/6837	5/12/16	VOR RWY 34, Amdt 1B
21–Jul–16	GA	Perry	Perry-Houston County	6/6867	5/24/16	VOR–A, Amdt 5A
21–Jul–16	KS	Smith Center	Smith Center Muni	6/7009	5/24/16	GPS RWY 17, Orig
21–Jul–16	KS	Smith Center	Smith Center Muni	6/7094	5/24/16	GPS RWY 35, Orig
21–Jul–16	MO	Mexico	Mexico Memorial	6/7367	5/12/16	RNAV (GPS) RWY 24, Amdt 1B
21–Jul–16	NJ	Woodbine	Woodbine Muni	6/7539	5/24/16	RNAV (GPS) RWY 19, Orig
21–Jul–16	NE	Hartington	Hartington Muni/Bud Becker Fld.	6/8482	5/12/16	RNAV (GPS) RWY 31, Orig-A
21–Jul–16	MA	Bedford	Laurence G Hanscom Fld.	6/8821	5/23/16	VOR RWY 23, Amdt 9
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9015	5/12/16	RNAV (GPS) Z RWY 8R, Amdt 4A
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9016	5/12/16	RNAV (RNP) Y RWY 8R, Amdt 1
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9017	5/12/16	ILS or LOC RWY 8R, ILS RWY 8R (SA CAT I), ILS RWY 8R (SA CAT II), Amdt 25A
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9018	5/12/16	GLS RWY 8R, Amdt 1
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9020	5/12/16	RNAV (GPS) Z RWY 9, Amdt 5
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9021	5/12/16	RNAV (RNP) Y RWY 9, Orig
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9022	5/12/16	ILS or LOC RWY 9, ILS RWY 9 (SA CAT I), ILS RWY 9 (SA CAT II), Amdt 10
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9023	5/12/16	GLS RWY 9, Amdt 1
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9034	5/12/16	ILS or LOC RWY 15R, Amdt 2
21–Jul–16	TX	Houston	George Bush Intercontinental/Houston.	6/9035	5/12/16	RNAV (GPS) RWY 15R, Amdt 2
21–Jul–16	OK	Miami	Miami Muni	6/9235	5/12/16	VOR/DME–A, Amdt 2
21–Jul–16	OK	Miami	Miami Muni	6/9236	5/12/16	RNAV (GPS) RWY 17, Orig
21–Jul–16	SC	Charleston	Charleston AFB/Intl	6/9696	5/25/16	VOR/DME or TACAN RWY 3, Amdt 14A
21–Jul–16	SC	Charleston	Charleston AFB/Intl	6/9697	5/25/16	VOR/DME or TACAN RWY 21, Amdt 14
21–Jul–16	SC	Charleston	Charleston AFB/Intl	6/9718	5/25/16	VOR/DME or TACAN RWY 33, Amdt 13A
21–Jul–16	GA	Macon	Middle Georgia Rgnl	6/9844	5/23/16	Takeoff Minimums and (Obstacle) DP, Amdt 3
21–Jul–16	GA	Macon	Middle Georgia Rgnl	6/9896	5/23/16	RNAV (GPS) RWY 23, Amdt 2B
21–Jul–16	GA	Macon	Middle Georgia Rgnl	6/9897	5/23/16	RNAV (GPS) RWY 31, Amdt 1B
21–Jul–16	GA	Macon	Middle Georgia Rgnl	6/9907	5/23/16	RNAV (GPS) RWY 13, Amdt 2B

[FR Doc. 2016–14132 Filed 6–16–16; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31076; Amdt. No. 3695]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 17, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on May 6, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 June 2016

Benton, AR, Saline County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1

Defuniak Springs, FL, Defuniak Springs, RNAV (GPS) RWY 9, Orig–A

New Smyrna Beach, FL, Massey Ranch Airpark, Takeoff Minimums and Obstacle DP, Orig–A

Peru, IN, Peru Muni, RNAV (GPS) RWY 19, Amdt 1

Iola, KS, Allen County, NDB RWY 1, Amdt 2B, CANCELED

Norwood, MA, Norwood Memorial, LOC RWY 35, Amdt 10D

Houghton Lake, MI, Roscommon County—Blodgett Memorial, VOR RWY 9, Amdt 5B, CANCELED

Houghton Lake, MI, Roscommon County—Blodgett Memorial, VOR RWY 27, Amdt 4A, CANCELED

Macon, MO, Macon-Fower Memorial, VOR RWY 2, Amdt 2

Pryor, OK, Mid-America Industrial, RNAV (GPS) RWY 18, Orig

Pryor, OK, Mid-America Industrial, RNAV (GPS) RWY 36, Orig

Pryor, OK, Mid-America Industrial, VOR/DME or GPS–A, ORIG–A, CANCELED

Grantsburg, WI, Grantsburg Muni, VOR/DME–A, Amdt 2, CANCELED

Effective 21 July 2016

Foley, AL, Foley Muni, NDB RWY 18, Amdt 1A, CANCELED

Foley, AL, Foley Muni, RNAV (GPS) RWY 18, Amdt 2

Foley, AL, Foley Muni, RNAV (GPS) RWY 36, Amdt 2

Goodyear, AZ, Phoenix Goodyear, POTER THREE Graphic DP

Goodyear, AZ, Phoenix Goodyear, RNAV (GPS) RWY 3, Amdt 1

Carlsbad, CA, Mc Clellan-Palomar, Takeoff Minimums and Obstacle DP, Amdt 5

Gunnison, CO, Gunnison-Crested Butte Rgnl, Takeoff Minimums and Obstacle DP, Amdt 8

Greenville, IL, Greenville, RNAV (GPS) RWY 18, Amdt 1

Greenville, IL, Greenville, RNAV (GPS) RWY 36, Orig

Gonzales, LA, Louisiana Rgnl, RNAV (GPS) RWY 35, Amdt 1A, CANCELED

Beverly, MA, Beverly Muni, Takeoff Minimums and Obstacle DP, Amdt 3A

Oakland, MD, Garrett County, VOR/DME RWY 9, Orig–A

Caribou, ME, Caribou Muni, RNAV (GPS) RWY 1, Orig

Caribou, ME, Caribou Muni, RNAV (GPS) RWY 19, Amdt 1

Lansing, MI, Capital Region Intl, ILS or LOC RWY 28L, Amdt 27A

Grenada, MS, Grenada Muni, ILS or LOC/DME RWY 13, Amdt 2B, CANCELED

Grenada, MS, Grenada Muni, NDB RWY 13, Amdt 1B, CANCELED

Charlotte, NC, Charlotte/Douglas Intl, Takeoff Minimums and Obstacle DP, Amdt 7

Las Vegas, NV, Mc Carran Intl, ILS or LOC RWY 25L, Amdt 5A

New York, NY, La Guardia, RNAV (GPS) RWY 13, Orig, CANCELED

Amarillo, TX, Rick Husband Amarillo Intl, RNAV (GPS) Y RWY 31, Amdt 2

Panhandle, TX, Panhandle-Carson County, RNAV (GPS) RWY 35, Orig–B

[FR Doc. 2016–14166 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31080; Amdt. No. 3699]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 17, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff

Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866;(2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on June 3, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective 21 July 2016*

Unalaska, AK, Unalaska, GPS–E, Orig, CANCELED
Unalaska, AK, Unalaska, NDB–A, Amdt 3
Unalaska, AK, Unalaska, RNAV (GPS)-B, Orig
Clinton, AR, Clinton Muni, RNAV (GPS) RWY 31, Orig
Clinton, AR, Clinton Muni, Takeoff Minimums and Obstacle DP, Orig
Fayetteville/Springdale/, AR, Northwest Arkansas Rgnl, ILS or LOC RWY 16, Amdt 3
Fayetteville/Springdale/, AR, Northwest Arkansas Rgnl, RNAV (GPS) RWY 16, Amdt 3
Fayetteville/Springdale/, AR, Northwest Arkansas Rgnl, ILS or LOC/DME RWY 17, Orig-C, CANCELED
Grand Canyon, AZ, Grand Canyon National Park, GRAND THREE Graphic DP
Los Angeles, CA, Los Angeles Intl, ILS or LOC RWY 25L, ILS RWY 25L (CAT II), ILS RWY 25L (CAT III), Amdt 13
Los Angeles, CA, Los Angeles Intl, ILS or LOC RWY 25R, Amdt 18
San Jose, CA, Norman Y. Mineta San Jose Intl, Takeoff Minimums and Obstacle DP, Amdt 6C
Santa Rosa, CA, Charles M Schulz—Sonoma County, RNAV (GPS) RWY 2, Orig-C
Santa Rosa, CA, Charles M Schulz—Sonoma County, RNAV (GPS) RWY 32, Amdt 1A
Vacaville, CA, Nut Tree, RNAV (GPS) Y RWY 20, ORIG–A, SUSPENDED
Vacaville, CA, Nut Tree, RNAV (GPS) Z RWY 20, ORIG–B, SUSPENDED
Van Nuys, CA, Van Nuys, LDA–C, Amdt 3
Van Nuys, CA, Takeoff Minimums and Obstacle DP, Amdt 6
Dublin, GA, W H 'Bud' Barron, RNAV (GPS) RWY 2, Amdt 1
Dublin, GA, W H 'Bud' Barron, RNAV (GPS) RWY 20, Amdt 1
Effingham, IL, Effingham County Memorial, RNAV (GPS) RWY 11, Orig
Mattoon/Charleston, IL, Coles County Memorial, NDB RWY 29, Amdt 5B, CANCELED
Rantoul, IL, Rantoul Natl Avn Cntr-Frank Elliott Fld, RNAV (GPS) RWY 18, Amdt 2
Middlesboro, KY, Middlesboro-Bell County, RNAV (GPS)-A, Amdt 1
Greenville, ME, Greenville Muni, RNAV (GPS) RWY 14, Amdt 1
Baldwin, MI, Baldwin Muni, RNAV (GPS)-A, Orig
Baldwin, MI, Baldwin Muni, VOR/DME or GPS–A, Amdt 1, CANCELED
Stevensville, MT, Stevensville, RNAV (GPS)-A, Orig-C
Omaha, NE., Eppley Airfield, ILS or LOC RWY 14R, ILS RWY 14R (SA CAT I), ILS RWY 14R (CAT II), ILS RWY 14R (CAT III), Amdt 5C
Toledo, OH, Toledo Executive, RNAV (GPS) RWY 32, Amdt 1
Altus, OK, Altus/Quartz Mountain Rgnl, RNAV (GPS) RWY 17, Amdt 2
Ketchum, OK, South Grand Lake Rgnl, RNAV (GPS) RWY 18, Orig
Ketchum, OK, South Grand Lake Rgnl, RNAV (GPS) RWY 36, Orig
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 31, Amdt 1A
Newport, OR, Newport Muni, NEWPORT ONE Graphic DP
Newport, OR, Newport Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Sisseton, SD, Sisseton Muni, RNAV (GPS) RWY 16, Orig
Sisseton, SD, Sisseton Muni, RNAV (GPS) RWY 34, Orig
Sisseton, SD, Sisseton Muni, Takeoff Minimums and Obstacle DP, Orig
Caddo Mills, TX, Caddo Mills Muni, NDB RWY 36, Amdt 2C, CANCELED
Big Piney, WY, Miley Memorial Field, Takeoff Minimums and Obstacle DP, Orig-A

Rescinded: On April 22, 2016 (81 FR 23601), the FAA published an Amendment in Docket No. 31071, Amdt No. 3691, to Part 97 of the Federal Aviation Regulations under section 97.23. The following entry for Aiken, SC, effective May 26, 2016 is hereby rescinded in its entirety:

Aiken, SC, Aiken Muni, VOR/DME–A, Amdt 1A, CANCELED

[FR Doc. 2016–14136 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31077 Amdt. No. 3696]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 17, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420)Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on May 6, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jun–16	WI	Madison	Dane County Rgnl-Truax Field.	5/0583	04/21/16	VOR Rwy 14, Orig-C
23–Jun–16	WI	Madison	Dane County Rgnl-Truax Field.	5/0584	04/21/16	VOR/DME or TACAN Rwy 14, Orig-C
23–Jun–16	OH	Georgetown	Brown County	5/1411	04/27/16	RNAV (GPS) Rwy 36, Orig-A
23–Jun–16	OH	Georgetown	Brown County	5/1412	04/27/16	VOR/DME–A, Amdt 1
23–Jun–16	TX	Olney	Olney Muni	5/2014	04/27/16	RNAV (GPS) Rwy 17, Orig-A
23–Jun–16	TX	Olney	Olney Muni	5/2015	04/27/16	RNAV (GPS) Rwy 35, Orig-A
23–Jun–16	IL	Savanna	Tri-Township	5/2441	04/27/16	VOR/DME–A, Orig
23–Jun–16	TX	Eagle Pass	Maverick County Memorial Intl.	5/3179	04/27/16	RNAV (GPS) Rwy 13, Orig
23–Jun–16	TX	Eagle Pass	Maverick County Memorial Intl.	5/3181	04/27/16	RNAV (GPS) Rwy 31, Orig
23–Jun–16	IL	Cahokia/St Louis	St Louis Downtown	5/3272	04/18/16	RNAV (GPS) Rwy 12R, Orig-A
23–Jun–16	TX	Eagle Lake	Eagle Lake	5/7965	04/25/16	RNAV (GPS) Rwy 17, Amdt 1A
23–Jun–16	TX	Eagle Lake	Eagle Lake	5/7966	04/25/16	RNAV (GPS) Rwy 35, Amdt 1A
23–Jun–16	TX	Eagle Lake	Eagle Lake	5/7967	04/25/16	VOR Rwy 17, Amdt 5
23–Jun–16	TX	Liberty	Liberty Muni	5/8015	04/27/16	RNAV (GPS) Rwy 16, Amdt 2A
23–Jun–16	MI	Lapeer	Dupont-Lapeer	5/8209	04/27/16	RNAV (GPS) Rwy 18, Orig-A
23–Jun–16	MI	Lapeer	Dupont-Lapeer	5/8211	04/27/16	RNAV (GPS) Rwy 36, Orig-A
23–Jun–16	IL	Fairfield	Fairfield Muni	6/0261	04/18/16	NDB Rwy 9, Amdt 3A
23–Jun–16	IL	Fairfield	Fairfield Muni	6/0262	04/18/16	RNAV (GPS) Rwy 9, Orig
23–Jun–16	CA	Santa Monica	Santa Monica Muni	6/1203	04/18/16	VOR or GPS–A, Amdt 10D
23–Jun–16	SC	Orangeburg	Orangeburg Muni	6/1330	04/25/16	RNAV (GPS) Rwy 17, Orig-B
23–Jun–16	SC	Orangeburg	Orangeburg Muni	6/1331	04/25/16	RNAV (GPS) Rwy 23, Amdt 1
23–Jun–16	SC	Orangeburg	Orangeburg Muni	6/1332	04/25/16	RNAV (GPS) Rwy 5, Amdt 1
23–Jun–16	SC	Orangeburg	Orangeburg Muni	6/1333	04/25/16	RNAV (GPS) Rwy 35, Amdt 1
23–Jun–16	NY	New York	John F Kennedy Intl	6/1418	04/21/16	RNAV (RNP) Z Rwy 22L, Amdt 1A
23–Jun–16	NY	New York	John F Kennedy Intl	6/1419	04/21/16	RNAV (GPS) Rwy 22R, Amdt 1D
23–Jun–16	KY	Louisville	Louisville Intl-Standiford Field.	6/1429	04/25/16	RNAV (RNP) Z Rwy 35L, Amdt 1A
23–Jun–16	NJ	Trenton	Trenton Mercer	6/1791	04/18/16	ILS or LOC Rwy 6, Amdt 10B
23–Jun–16	NJ	Trenton	Trenton Mercer	6/1792	04/18/16	RNAV (GPS) Z Rwy 6, Orig-B
23–Jun–16	NH	Laconia	Laconia Muni	6/2531	04/25/16	ILS or LOC Rwy 8, Amdt 1
23–Jun–16	NH	Laconia	Laconia Muni	6/2532	04/25/16	NDB Rwy 8, Amdt 9
23–Jun–16	NH	Laconia	Laconia Muni	6/2533	04/25/16	RNAV (GPS) Rwy 8, Orig
23–Jun–16	NH	Laconia	Laconia Muni	6/2534	04/25/16	RNAV (GPS) Rwy 26, Orig
23–Jun–16	PA	Bloomsburg	Bloomsburg Muni	6/2940	04/21/16	RNAV (GPS)-B, Amdt 1
23–Jun–16	PA	Bloomsburg	Bloomsburg Muni	6/2942	04/21/16	VOR–A, Amdt 1
23–Jun–16	OH	Cleveland	Cleveland-Hopkins Intl	6/3716	04/27/16	RNAV (GPS) Rwy 6L, Amdt 1C
23–Jun–16	OH	Cleveland	Cleveland-Hopkins Intl	6/3717	04/27/16	RNAV (GPS) Rwy 6R, Amdt 2C
23–Jun–16	MS	Greenwood	Greenwood-Leflore	6/4032	04/18/16	VOR Rwy 5, Amdt 13
23–Jun–16	MO	Macon	Macon-Fower Memorial	6/4279	04/27/16	RNAV (GPS) Rwy 20, Orig
23–Jun–16	MO	Macon	Macon-Fower Memorial	6/4284	04/27/16	VOR/DME Rwy 20, Amdt 2
23–Jun–16	MO	Macon	Macon-Fower Memorial	6/4288	04/27/16	RNAV (GPS) Rwy 2, Orig
23–Jun–16	TX	Austin	San Marcos Regional	6/4557	04/21/16	RNAV (GPS) Rwy 31, Orig-A
23–Jun–16	OH	Carrollton	Carroll County-Tolson	6/4559	04/25/16	RNAV (GPS) Rwy 7, Orig-A
23–Jun–16	TX	Austin	San Marcos Regional	6/4564	04/21/16	RNAV (GPS) Rwy 8, Orig-A
23–Jun–16	TX	Austin	San Marcos Regional	6/4565	04/21/16	NDB Rwy 13, Amdt 5
23–Jun–16	TX	Austin	San Marcos Regional	6/4566	04/21/16	ILS or LOC Rwy 13, Amdt 6A
23–Jun–16	TX	Austin	San Marcos Regional	6/4567	04/21/16	RNAV (GPS) Rwy 35, Orig-A
23–Jun–16	TX	Austin	San Marcos Regional	6/4568	04/21/16	RNAV (GPS) Rwy 13, Amdt 2A
23–Jun–16	TX	Austin	San Marcos Regional	6/4570	04/21/16	Takeoff Minimums and (Obstacle) DP, Amdt 2
23–Jun–16	TX	Austin	San Marcos Regional	6/4571	04/21/16	RNAV (GPS) Rwy 26, Orig-A
23–Jun–16	TX	Austin	San Marcos Regional	6/4572	04/21/16	RNAV (GPS) Rwy 17, Orig-A
23–Jun–16	KY	Somerset	Lake Cumberland Rgnl	6/4742	04/27/16	ILS or LOC/DME Rwy 5, Orig-C
23–Jun–16	KY	London	London-Corbin Arpt-Magee Field.	6/4745	04/27/16	ILS or LOC Rwy 6, Amdt 1A

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jun–16	KY	London	London-Corbin Arpt-Magee Field.	6/4746	04/27/16	VOR Rwy 6, Amdt 13A
23–Jun–16	MS	Hattiesburg	Hattiesburg Bobby L Chain Muni.	6/4766	04/18/16	RNAV (GPS) Y Rwy 13, Amdt 2A
23–Jun–16	MS	Hattiesburg	Hattiesburg Bobby L Chain Muni.	6/4767	04/18/16	RNAV (GPS) Z Rwy 13, Amdt 1
23–Jun–16	OH	Youngstown	Youngstown Elser Metro	6/5115	04/25/16	RNAV (GPS) Rwy 10, Orig-A
23–Jun–16	OH	Youngstown	Youngstown Elser Metro	6/5116	04/25/16	RNAV (GPS) Rwy 28, Orig-A
23–Jun–16	CO	Steamboat Springs	Steamboat Springs/Bob Adams Field.	6/5725	04/18/16	RNAV (GPS)-E, Orig
23–Jun–16	IN	Indianapolis	Indianapolis Executive	6/6319	04/25/16	ILS or LOC Rwy 36, Amdt 5A
23–Jun–16	IN	Indianapolis	Indianapolis Executive	6/6321	04/25/16	RNAV (GPS) Rwy 36, Orig-B
23–Jun–16	IN	Indianapolis	Indianapolis Executive	6/6323	04/25/16	VOR/DME Rwy 18, Amdt 1A
23–Jun–16	IN	Indianapolis	Indianapolis Executive	6/6324	04/25/16	RNAV (GPS) Rwy 18, Amdt 1A
23–Jun–16	AR	Jonesboro	Jonesboro Muni	6/7374	04/25/16	VOR Rwy 23, Amdt 11
23–Jun–16	AR	Colt	Delta Rgnl	6/7516	04/25/16	RNAV (GPS) Rwy 18, Orig
23–Jun–16	AR	Colt	Delta Rgnl	6/7517	04/25/16	RNAV (GPS) Rwy 36, Orig
23–Jun–16	IL	Chicago/Rockford	Chicago/Rockford Intl	6/7985	04/25/16	RNAV (GPS) Rwy 1, Amdt 1
23–Jun–16	IA	Washington	Washington Muni	6/8026	04/25/16	VOR/DME Rwy 36, Amdt 1
23–Jun–16	IN	North Vernon	North Vernon	6/8027	04/18/16	RNAV (GPS) Rwy 5, Orig-A
23–Jun–16	CA	Davis/Woodland/Winters	Yolo County	6/8115	04/18/16	RNAV (GPS) Rwy 16, Amdt 2A
23–Jun–16	CA	Davis/Woodland/Winters	Yolo County	6/8116	04/18/16	RNAV (GPS) Rwy 34, Amdt 2A
23–Jun–16	TX	Livingston	Livingston Muni	6/8274	04/21/16	RNAV (GPS) Rwy 30, Orig-B
23–Jun–16	TX	Jacksonville	Cherokee County	6/8286	04/21/16	VOR/DME Rwy 14, Amdt 4
23–Jun–16	ME	Houlton	Houlton Intl	6/8358	04/25/16	RNAV (GPS)-A, Orig
23–Jun–16	ME	Houlton	Houlton Intl	6/8454	04/25/16	RNAV (GPS) Rwy 5, Orig-B
23–Jun–16	ME	Houlton	Houlton Intl	6/8455	04/25/16	VOR/DME Rwy 5, Amdt 11A
23–Jun–16	NY	Schenectady	Schenectady County	6/8629	04/25/16	ILS or LOC Rwy 4, Amdt 5D
23–Jun–16	NY	Schenectady	Schenectady County	6/8630	04/25/16	RNAV (GPS) Rwy 22, Orig-B
23–Jun–16	NY	Schenectady	Schenectady County	6/8632	04/25/16	NDB Rwy 22, Amdt 16B
23–Jun–16	NY	Schenectady	Schenectady County	6/8635	04/25/16	RNAV (GPS) Rwy 28, Orig-C
23–Jun–16	MO	Brookfield	North Central Missouri Rgnl.	6/8928	04/25/16	RNAV (GPS) Rwy 36, Amdt 2
23–Jun–16	TX	Midlothian/Waxahachie	Mid-Way Rgnl	6/8936	04/21/16	RNAV (GPS) Rwy 18, Orig
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8947	04/18/16	Takeoff Minimums and (Obstacle) DP, Amdt 4
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8948	04/18/16	ILS or LOC Rwy 10R, Amdt 4A
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8949	04/18/16	RNAV (GPS) Rwy 10R, Amdt 2A
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8950	04/18/16	RNAV (GPS) Rwy 14, Amdt 2A
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8951	04/18/16	RNAV (GPS) Rwy 28L, Amdt 1A
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8952	04/18/16	RNAV (GPS) Rwy 32, Amdt 1B
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8953	04/18/16	VOR/DME Rwy 14, Amdt 9B
23–Jun–16	FL	Fort Pierce	St Lucie County Intl	6/8954	04/18/16	NDB Rwy 28L, Amdt 2A
23–Jun–16	NE	Minden	Pioneer Village Field	6/9010	04/27/16	VOR–A, Orig
23–Jun–16	MI	Detroit	Detroit Metropolitan Wayne County.	6/9012	04/27/16	RNAV (GPS) Rwy 27L, Amdt 2
23–Jun–16	LA	Jennings	Jennings	6/9013	04/25/16	RNAV (GPS) Rwy 26, Orig
23–Jun–16	LA	Jennings	Jennings	6/9014	04/25/16	RNAV (GPS) Rwy 8, Amdt 1
23–Jun–16	TX	Houston	George Bush Intercontinental/Houston.	6/9032	04/21/16	RNAV (GPS) Rwy 33R, Amdt 2
23–Jun–16	TX	Houston	George Bush Intercontinental/Houston.	6/9033	04/21/16	ILS or LOC Rwy 33R, Amdt 13
23–Jun–16	TX	Houston	George Bush Intercontinental/Houston.	6/9036	04/21/16	RNAV (RNP) Y Rwy 26R, Orig-A
23–Jun–16	KS	El Dorado	El Dorado/Captain Jack Thomas Memorial.	6/9037	04/25/16	RNAV (GPS) Rwy 22, Amdt 1
23–Jun–16	WI	Crandon	Crandon/Steve Conway Muni.	6/9054	04/27/16	RNAV (GPS) Rwy 12, Orig
23–Jun–16	WI	Crandon	Crandon/Steve Conway Muni.	6/9055	04/27/16	RNAV (GPS) Rwy 30, Orig
23–Jun–16	ND	Watford City	Watford City Muni	6/9462	04/18/16	RNAV (GPS) Rwy 12, Orig-A
23–Jun–16	ND	Watford City	Watford City Muni	6/9463	04/18/16	RNAV (GPS) Rwy 30, Orig

[FR Doc. 2016–14135 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

[167A2100DD/AAKC001030/ A0A501010.999900]

RIN 1076–AF17

Leasing of Osage Reservation Lands for Oil and Gas Mining

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) previously published a final rule "Leasing of Osage Reservation Lands for Oil and Gas Mining" on May 11, 2015, but due to a court order enjoining the final rule and subsequent remand, that version of the rule never became effective. This final rule amends the Code of Federal Regulations to reinstate the version of the rule that was in effect prior to the 2015 final rule because that prior version of the rule remains operative.

DATES: This final rule is effective as of June 17, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Eddie Streater, Designated Federal Officer, BIA, (918) 781–4608.

SUPPLEMENTARY INFORMATION: The BIA published the final rule, "Leasing of Osage Reservation Lands for Oil and Gas Mining," on May 11, 2015 at 80 FR 26994. The effective date of the final rule was July 10, 2015. On July 1, 2015, the Osage Minerals Council and Osage Producers Association filed suit in the U.S. District Court for the Northern District of Oklahoma, Case No. 15–cv–00367–GKF–PJC, seeking to enjoin implementation of the final rule. On August 10, 2015, the Court entered an Order enjoining the final rule. The BIA determined that a voluntary remand of the final rule was appropriate. On November 19, 2015, the Court entered the Judgment of Remand. The version of 25 CFR part 226 in effect prior to publication of the final rule on May 11, 2015, remains operative. *See* 55 FR 33116 (Aug. 14, 1990). This final rule reinserts into the Code of Federal Regulations that version of 25 CFR part 226 that was in effect prior to the May 11, 2015 final rule publication.

Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this rule reinstates the existing, operative rule.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that is has no substantial direct effects on the Osage Nation or other federally recognized Indian Tribes and that consultation under the Department's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information, see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

M. Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for public comment. BIA finds that there is good cause to promulgate this rule without providing for public comment because the final rule published in May 2015 never took effect and the rule being published today remains the operative rule. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule. Thus, notice and public comment is impracticable and unnecessary.

List of Subjects in 25 CFR Part 226

Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends Title 25 of the Code of Federal Regulations by revising part 226 to read as follows:

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

Sec.
226.1 Definitions.

Leasing Procedure, Rental and Royalty

226.2 Sale of leases.
226.3 Surrender of lease.
226.4 Form of payment.
226.5 Leases subject to current regulations.
226.6 Bonds.
226.7 Provisions of forms made a part of the regulations.
226.8 Corporation and corporate information.
226.9 Rental and drilling obligations.
226.10 Term of lease.
226.11 Royalty payments.
226.12 Government reserves right to purchase oil.
226.13 Time of royalty payments and reports.
226.14 Contracts and division orders.
226.15 Unit leases, assignments and related instruments.

Operations

226.16 Commencement of operations.
226.17 How to acquire permission to begin operations on a restricted homestead allotment.
226.18 Information to be given surface owners prior to commencement of drilling operations.
226.19 Use of surface of land.
226.20 Settlement of damages claimed.
226.21 Procedure for settlement of damages claimed.
226.22 Prohibition of pollution.
226.23 Easements for wells off leased premises.
226.24 Lessee's use of water.
226.25 Gas well drilled by oil lessees and vice versa.
226.26 Determining cost of well.
226.27 Gas for operating purposes and tribal use.

Cessation of Operations

226.28 Shutdown, abandonment, and plugging of wells.
226.29 Disposition of casings and other improvements.

Requirements of Lessees

226.30 Lessees subject to Superintendent's orders; books and records open to inspection.
226.31 Lessee's process agents.
226.32 Well records and reports.
226.33 Line drilling.
226.34 Wells and tank batteries to be marked.
226.35 Formations to be protected.
226.36 Control devices.
226.37 Waste of oil and gas.
226.38 Measuring and storing oil.
226.39 Measurement of gas.
226.40 Use of gas for lifting oil.
226.41 Accidents to be reported.

Penalties

226.42 Penalty for violation of lease terms.
226.43 Penalties for violation of certain operating regulations.

Appeals and Notices

226.44 Appeals.
226.45 Notices.
226.46 Information collection.

Authority: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660.

§ 226.1 Definitions.

As used in this part 226, terms shall have the meanings set forth in this section.

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) *Osage Tribal Council* means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to lease or take other actions on oil and gas mining pertaining to the Osage Mineral Estate.

(c) *Superintendent* means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or his authorized representative acting under delegated authority.

(d) *Oil lessee* means any person, firm, or corporation to whom an oil mining lease is made under the regulations in this part.

(e) *Gas lessee* means any person, firm, or corporation to whom a gas mining lease is made under the regulations in this part.

(f) *Oil and gas lessee* means any person, firm, or corporation to whom an oil and gas mining lease is made under the regulations in this part.

(g) *Primary term* means the basic period of time for which a lease is issued during which the lease contract may be kept in force by payment of rentals.

(h) *Major purchaser* means any one of the minimum number of purchasers taking 95 percent of the oil in Osage County, Oklahoma. Any oil purchased by a purchaser from itself, its subsidiaries, partnerships, associations, or other corporations in which it has a financial or management interest shall be excluded from the determination of a major purchaser.

(i) *Casinghead gas* means gas produced from an oil well as a consequence of oil production from the same formation.

(j) *Natural gas* means any fluid, either combustible or noncombustible, recovered at the surface in the gaseous phase and/or hydrocarbons recovered at the surface as liquids which are the result of condensation caused by reduction of pressure and temperature of hydrocarbons originally existing in a reservoir in the gaseous phase.

(k) *Authorized representative of an oil lessee, gas lessee, or oil and gas lessee* means any person, group, or groups of persons, partnership, association, company, corporation, organization or agent employed by or contracted with a lessee or any subcontractor to conduct oil and gas operations or provide facilities to market oil and gas.

(l) *Oil well* means any well which produces one (1) barrel or more of crude petroleum oil for each 15,000 standard cubic feet of natural gas.

(m) *Gas well* means any well which:

(1) Produces natural gas not associated with crude petroleum oil at the time of production or

(2) Produces more than 15,000 standard cubic feet of natural gas to each barrel of crude petroleum oil from the same producing formation.

Leasing Procedure, Rental and Royalty

§ 226.2 Sale of leases.

(a) Written application, together with any nomination fee, for tracts to be offered for lease shall be filed with the Superintendent.

(b) The Superintendent, with the consent of the Osage Tribal Council, shall publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale. Successful bidders must deposit with the Superintendent on day of sale a check or cash in an amount not less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be subject to the acceptance of the Osage Tribal Council and approval of the Superintendent. Within 20 days after notification of being the successful bidder, and said bidder must submit to the Superintendent the balance of the cash bonus, a $10 filing fee, and the lease in completed form. The Superintendent may extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of moneys due. If the bidder fails to pay the full cash consideration within said period or fails to file the completed lease within said period or extention thereof, or if the lease is rejected through no fault of the Osage Tribal Council or the Superintendent, 25 percent of the cash bonus bid will be forfeited for the use and benefits of the Osage Tribe. The Superintendent may reject a lease made on an accepted bid, upon evidence satisfactory to him of collusion, fraud, or other irregularity in connection with the notice of sale. The Superintendent may approve oil leases, gas leases, and oil and gas leases made by the Osage Tribal Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required.

(c) Each oil and/or gas lease and activities and installations associated therewith subject to these regulations shall be assessed and evaluated for its environmental impact prior to its approval by the Superintendent.

(d) Lessee shall accept a lease with the understanding that a mineral not covered by his lease may be leased separately.

(e) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the Government and no such employee shall be permitted to acquire any interest in leases covering the Osage Mineral Estate by ownership of stock in corporations having leases or in any other manner.

(f) The Osage Tribal Council may utilize the following procedures among others, in entering into a mining lease. A contract may be entered into through competitive bidding as outlined in § 226.2(b), negotiation, or a combination of both. The Osage Tribal Council may also request the Superintendent to undertake the preparation, advertisement and negotiation. The Superintendent may approve any such contract made by the Osage Tribal Council.

§ 226.3 Surrender of lease.

Lessee may, with the approval of the Superintendent and payment of a $10 filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all subsequent obligations and liabilities. If the lease, or portion being surrendered, is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation: *Provided,* That if this lease has been recorded, Lessee shall execute a release and record the same in the proper office. Such surrender shall not entitle Lessee to a refund of the unused portion of rental paid in lieu of development, nor shall it relieve Lessee and his sureties of any obligation and liability incurred prior to such surrender: *Provided further,* That when there is a partial surrender of any lease and the acreage to be retained is less than 160 acres or there is a surrender of a separate horizon, such surrender shall become effective only with the consent of the Osage Tribal Council and approval of the Superintendent.

§ 226.4 Form of payment.

Sums due under a lease contract and/or the regulations in this part shall be paid by cash or check made payable to the Bureau of Indian Affairs and delivered to the Osage Agency, Pawhuska, Oklahoma 74056. Such sums shall be a prior lien on all equipment and unsold oil on the leased premises.

§ 226.5 Leases subject to current regulations.

Leases issued pursuant to this part shall be subject to the current regulations of the Secretary, all of which are made a part of such leases: *Provided,* That no amendment or change of such regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties and approved by the Superintendent.

§ 226.6 Bonds.

Lessees shall furnish with each lease a corporate surety bond acceptable to the Superintendent as follows:

(a) A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in an amount of not less than $5,000 for each quarter section or fractional quarter section covered by said lease: *Provided, however,* That one bond in the penal sum or not less than $50,000 may be filed on Form G covering all oil, gas and combination oil and gas leases not in excess of 10,240 acres to which Lessee is or may become a party.

(b) In lieu of the bonds required under paragraph (a) of this section, a bond in the penal sum of $150,000 may be filed on Form 5–5438 for full nationwide coverage of all leases, without geographic or acreage limitation, to which the Lessee is or may become a party.

(c) A bond on Form H shall be filed in an amount of not less than $5,000 covering a lease acquired through assignment where the assignee does not have a collective bond on form G or nationwide bond, or the corporate surety does not execute its consent to remain bound under the original bond given to secure the faithful performance of the terms and conditions of the lease.

(d) The right is specifically reserved to increase the amount of bonds prescribed in paragraphs (a) and (c) of this section in any particular case when the Superintendent deems it proper. The nationwide bond may be increased at any time in the discretion of the Secretary.

§ 226.7 Provisions of forms made a part of the regulations.

Leases, assignments, and supporting instruments shall be in the form prescribed by the Secretary, and such forms are hereby made a part of the regulations.

§ 226.8 Corporation and corporate information.

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its Articles of Incorporation and, if foreign to the State of Oklahoma, evidence showing compliance with the corporation laws thereof.

(b) Whenever deemed advisable the Superintendent may require a corporation to file any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within a reasonable time.

§ 226.9 Rental and drilling obligations.

(a) Oil leases, gas leases, and combination oil and gas leases. Unless Lessee shall complete and place on production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than $1 per acre for an oil or gas lease, or not less than $2.00 per acre for a combination oil and gas lease, shall be paid before the end of the first year of the lease. The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year. The lease shall terminate as of the due date of the rental unless such rental shall be received by the Superintendent, or shall have been mailed as indicated by postmark on or before said date. The completion of a well producing in paying quantities shall, for so long as such production continues, relieve Lessee from any further payment of rental, except that should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part: *Provided,* That the Superintendent in his discretion may order further development of any leased acreage or separate horizon if, in his opinion, a prudent operator would conduct further development. If Lessee refuses to comply, the refusal will be considered a violation of the lease terms and said lease shall be subject to cancellation as to the acreage or horizon the further development of which was ordered: *Provided further,* That the Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when in his judgment, such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage Tribe. The superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production. If a lessee holds both an oil lease and a gas lease covering the same acreage, such lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

(b) The Superintendent may, with the consent of and under terms approved by the Osage Tribal Council, grant an extension of the primary term of a lease on which the actual drilling of a well shall have commenced within the term thereof or for the purpose of enabling Lessee to obtain a market for his oil and/or gas production.

§ 226.10 Term of lease.

Leases issued hereunder shall be for a primary term as established by the Osage Tribal Council, approved by the Superintendent, and so stated in the notice of sale of such leases and so long thereafter as the minerals specified are produced in paying quantities.

§ 226.11 Royalty payments.

(a) *Royalty on oil*—(1) *Royalty rate.* Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 162/3 percent of the gross proceeds from sales after deducting the oil used by Lessee for development and operation purposes on the lease: *Provided,* That when the quantity of oil taken from all the producing wells on any quarter-section or fraction thereof, according to the public survey, during any calendar month is sufficient to average one hundred or more barrels per active producing well per day the royalty on such oil shall be not less than 20 percent. The Osage Tribal Council may, upon presentation of justifiable economic evidence by Lessee, agree to a revised royalty rate subject to approval by the Superintendent, applicable to additional oil produced from a lease or leases by enhanced recovery methods, which rate shall not be less than 121/2 percent of the gross proceeds from sale of oil produced by enhanced recovery processes, other than gas injection, after deducting the oil used by Lessee for development and operating purposes on the lease or leases.

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, but at not less than the highest posted price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

(3) Royalty in kind. Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for a period not to exceed 60 days from date of production after notice of such election.

(b) *Royalty on gas*—(1) *Oil lease.* All casinghead gas shall belong to the oil Lessee subject to any rights under existing gas leases. All casinghead gas removed from the lease from which it is produced shall be metered unless otherwise approved by the Superintendent and be subject to a royalty of not less than 162/3 percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If an oil Lessee supplies casinghead gas produced from one lease for operation and/or development of other leases, either his/hers or others, a royalty of not less than 162/3 percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized by the oil Lessee may, with the approval of the Superintendent, be utilized or sold by the gas Lessee, subject to the prescribed royalty of not less than 162/3 percent of the market value.

(2) *Gas lease.* Lessee shall pay a royalty of not less than 162/3 percent of the market value of all natural gas and products extracted therefrom produced and sold from his lease. Natural gas used in the reasonable and prudent

operation and development of said lease shall be exempted from royalty payment.

(3) *Combination oil and gas lease.* Lessee shall pay royalty as provided in paragraphs (b)(1) and (2) of this section.

(c) *Minimum royalty.* In no event shall the royalty paid from producing leases during any year be less than an amount equal to the annual rental specified for the lease. Any underpayment of minimum royalty shall be due and payable within 45 days following the end of the lease year. After the primary term, Lessee shall submit with his payment evidence that the lease is producing in paying quantities. The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production. Payment for any underpayment not made within the time specified shall be subject to a late charge at the rate of not less than 11/2 percent per month for each month or fraction thereof until paid.

§ 226.12 Government reserves right to purchase oil.

Any of the executive departments of the U.S. Government shall have the option to purchase all or any part of the oil produced from any lease at not less than the highest posted price as defined in § 226.11.

§ 226.13 Time of royalty payments and reports.

(a) Royalty payments due may be paid by either purchaser or Lessee. Unless otherwise provided by the Osage Tribal Council and approved by the Superintendent, all payments shall be due by the 25th day of each month and shall cover the sales of the preceding month. Failure to make such payments shall subject Lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than 11/2 percent for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charges.

(b) Lessee shall furnish certified monthly reports by the 25th of each following month covering all operations, whether there has been production or not, indicating therein the total amount of oil, natural gas, casinghead gas, and other products subject to royalty payment.

(c) Failure to remit payments or reports shall subject Lessee to further penalties as provided in §§ 226.42 and 226.43 and shall subject the division order to cancellation.

§ 226.14 Contracts and division orders.

(a) Lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom which will provide for the purchaser to make payment of royalty in accordance with his lease: *Provided,* That such division orders or contracts shall not relieve Lessee from responsibility for the payment of the royalty should the purchaser fail to pay. No production shall be removed from the leased premises until a division order and/or contract and its terms are approved by the Superintendent: *Provided further,* That the Superintendent may grant temporary permission to run oil or gas from a lease pending the approval of a division order or contract. Lessee shall file a certified monthly report and pay royalty on the value of all oil and gas used off the premises for development and operating purposes. Lessee shall be responsible for the correct measurement and reporting of all oil and/or gas taken from the leased premises.

(b) Lessee shall require the purchaser of oil and/or gas from his/her lease or leases to furnish the Superintendent, no later than the 25th day of each month, a statement reporting the gross barrels of oil and/or gross Mcf of gas sold during the preceding month. The Superintendent may authorize an extension of time, not to exceed 10 days, for furnishing this statement.

§ 226.15 Unit leases, assignments and related instruments.

(a) *Unitization of leases.* The Osage Tribal Council and Lessee or Lessees, may, with the approval of the Superintendent, unitize or merge, two or more oil or oil and gas leases into a unit or cooperative operating plan to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof embracing the lands covered by such lease or leases. The cooperative or unit agreement shall be subject to the regulations in this part and applicable laws governing the leasing of the Osage Mineral Estate. Any agreement between the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included shall be submitted to the Superintendent for his approval. Upon approval the leases included thereunder shall be restored to their original terms: *Provided,* That for the purpose of preventing waste and to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof, all oil leases, oil and gas leases, and gas leases issued heretofore and hereafter under the provisions of the regulations in this part shall be subject to any unit development plan affecting the leased lands that may be required by the Superintendent with the consent of the Osage Tribal Council, and which plan shall adequately protect the rights of all parties in interest including the Osage Mineral Estate.

(b) *Assignments.* Approved leases or any interest therein may be assigned or transferred only with the approval of the Superintendent. The assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof. Lessee must assign either his entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: *Provided,* That when an assignment covers only a portion of a lease or covers interests in separate horizons such assignment shall be subject to both the consent of the Osage Tribal Council and approval of the Superintendent. If a lease is divided by the assignment of an entire interest in any part, each part shall be considered a separate lease and the assignee shall be bound to comply with all the terms and conditions of the original lease. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 days. A filing fee of $10 shall accompany each assignment.

(c) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an interest in a lease as such term is used in paragraph (b) of this section. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of Lessee under his lease and the regulations in this part. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered in justifying the shutdown or abandonment of any well. Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to paragraph (b) of this section. An agreement creating overriding royalties or payment out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

(d) *Drilling contracts.* The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind the Department to approve subsequent assignments that may be provided for in said contracts. Approval merely authorizes entry on the lease for the purpose of development work.

(e) *Combining leases.* The lessee owning both an oil lease and gas lease covering the same acreage is authorized to convert such leases to a combination oil and gas lease.

Operations

§ 226.16 Commencement of operations.

(a) No operations shall be permitted upon any tract of land until a lease covering such tract shall have been approved by the Superintendent: *Provided,* That the Superintendent may grant authority to any party under such rules, consistent with the regulations in this part that he deems proper, to conduct geophysical and geological exploration work.

(b) Lessee shall submit applications on forms to be furnished by the Superintendent and secure his approval before:

(1) Well drilling, treating, or workover operations are started on the leased premises.

(2) Removing casing from any well.

(c) Lessee shall notify the Superintendent a reasonable time in advance of starting work, of intention to drill, redrill, deepen, plug, or abandon a well.

§ 226.17 How to acquire permission to begin operations on a restricted homestead allotment.

(a) Lessee may conduct operations within or upon a restricted homestead selection only with the written consent of the Superintendent.

(b) If the allottee is unwilling to permit operations on his homestead, the Superintendent will cause an examination of the premises to be made with the allottee and lessee or his representative. Upon finding that the interests of the Osage Tribe require that the tract be developed, the Superintendent will endeavor to have the parties agree upon the terms under which operations on the homestead may be conducted.

(c) In the event the allottee and lessee cannot reach an agreement, the matter shall be presented by all parties before the Osage Tribal Council, and the Council shall make its recommendations. Such recommendations shall be considered as final and binding upon the allottee and lessee. A guardian may represent the allottee. Where no one is authorized or where no person is deemed by the Superintendent to be a proper party to speak for a person of unsound mind or feeble understanding, the Principal Chief of the Osage Tribe shall represent him.

(d) If the allottee or his representative does not appear before the Osage Tribal Council when notified by the Superintendent, or if the Council fails to act within 10 days after the matter is referred to it, the Superintendent may authorize lessee to proceed with operations in conformity with the provisions of his lease and the regulations in this part.

§ 226.18 Information to be given surface owners prior to commencement of drilling operations.

Except for the surveying and staking of a well, no operations of any kind shall commence until the lessee or his/her authorized representative shall meet with the surface owner or his/her representative, if a resident of and present in Osage County, Oklahoma. Unless waived by the Superintendent or otherwise agreed to between the lessee and surface owner, such meeting shall be held at least 10 days prior to the commencement or any operations, except for the surveying and staking of the well. At such meeting lessee or his/her authorized representative shall comply with the following requirements:

(a) Indicate the location of the well or wells to be drilled.

(b) Arrange for route of ingress and egress. Upon failure to agree on route ingress and egress, said route shall be set by the Superintendent.

(c) Impart to said surface owners the name and address of the party or representative upon whom the surface owner shall serve any claim for damages which he may sustain from mineral development or operations, and as to the procedure for settlement thereof as provided in § 226.21.

(d) Where the drilling is to be on restricted land, lessee or his authorized representative in the manner provided above shall meet with the Superintendent.

(e) When the surface owner or his/her representative is not a resident of, or is not physically present in, Osage County, Oklahoma, or cannot be contacted at the last known address, the Superintendent may authorize lessee to proceed with operations.

§ 226.19 Use of surface of land.

(a) Lessee or his/her authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not limited to the right to lay and maintain pipelines, electric lines, pull rods, other appliances necessary for operations and marketing, and the right-of-way for ingress and egress to any point of operations. If Lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said routing shall be set by the Superintendent. The right to use water for lease operations is established by § 226.24. Lessee shall conduct his/her operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any unavoidable nuisance to be maintained on the premises under his/her control.

(b) Before commencing a drilling operation, Lessee shall pay or tender to the surface owner commencement money in the amount of $25 per seismic shot hole and commencement money in the amount of $300 for each well, after which Lessee shall be entitled to immediate possession of the drilling site. Commencement money will not be required for the redrilling of a well which was originally drilled under the currently lease. A drilling site shall be held to the minimum area essential for operations and shall not exceed one and one-half acres in area unless authorized by the Superintendent. Commencement money shall be a credit toward the settlement of the total damages. Acceptance of commencement money by the surface owner does not affect his/her right to compensation for damages as described in § 226.20, occasioned by the drilling and completion of the well for which it was paid. Since actual damage to the surface from operations cannot necessarily be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations.

(c) Where the surface is restricted land, commencement money shall be paid to the Superintendent for the landowner. All other surface owners shall be paid or tendered such commencement money direct. Where such surface owners are not residents of Osage County nor have a representative located therein, such payment shall be made or tendered to the last known address of the surface owner at least 5 days before commencing drilling operation on any well: *Provided,* That should lessee be unable to reach the owner of the surface of the land for the purpose of tendering the commencement money or if the owner of the surface of the land shall refuse to accept the same, lessee shall deposit such amount with the Superintendent by check payable to the Bureau of Indian Affairs. The superintendent shall thereupon advise the owner of the surface of the land by mail at his last known address that the commencement money is being held for payment to him upon his written request.

(d) Lessee shall also pay fees for tank sites not exceeding 50 feet square at the rate of $100 per tank site or other vessel: *Provided,* That no payment shall be due for a tank temporarily set on a well location site for drilling, completing, or testing. The sum to be paid for a tank occupying more than 50 feet square shall be agreed upon between the surface owner and lessee or, on failure to agree, the same shall be determined by arbitration as provided by § 226.21.

§ 226.20 Settlement of damages claimed.

(a) Lessee or his authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages shall be paid to the owner of the surface and by him apportioned among the parties interested in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If lessee or his authorized representative and surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

(b) Surface owners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the surface owners.

(c) In settlement of damages on restricted land all sums due and payable shall be paid to the Superintendent for credit to the account of the Indian entitled thereto. The Superintendent will make the apportionment between the Indian landowner or owners and surface Lessee of record.

(d) Any person claiming an interest in any leased tract or in damages thereto, must furnish to the Superintendent a statement in writing showing said claimed interest. Failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

§ 226.21 Procedure for settlement of damages claimed.

Where the surface owner or his lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by lessee or his authorized representative, the procedure for recovery shall be as follows:

(a) The party or parties aggrieved shall, as soon as possible after the discovery of any damages, serve written notice to Lessee or his authorized representative as provided by § 226.18. Written notice shall contain the nature and location of the alleged damages, the date of occurrence, the names of the party or parties causing said damages, and the amount of damages. It is not intended by this requirement to limit the time within which action may be brought in the courts to less than the 90-day period allowed by section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479).

(b) If the alleged damages are not adjusted at the time of such notice, Lessee or his authorized representative shall try to adjust the claim with the party or parties aggrieved within 20 days from receipt of the notice. If the claimant is the owner of restricted property and a settlement results, a copy of the settlement agreement shall be filed with the Superintendent. If the settlement agreement is approved by the Superintendent, payment shall be made to the Superintendent for the benefit of said claimant.

(c) If the parties fail to adjust the claim within the 20 days specified, then within 10 days thereafter each of the interested parties shall appoint an arbitrator who immediately upon their appointment shall agree upon a third arbitrator. If the two arbitrators shall fail to agree upon a third arbitrator within 10 days, they shall immediately notify the parties in interest. If said parties cannot agree upon a third arbitrator within 5 days after receipt of such notice, the Superintendent shall appoint the third arbitrator.

(d) As soon as the third arbitrator is appointed, the arbitrators shall meet; hear the evidence and arguments of the parties; and examine the lands, crops, improvements, or other property alleged to have been injured. Within 10 days they shall render their decision as to the amount of the damage due. The arbitrators shall be disinterested persons. The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative. Each Lessee or his authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him.

(e) When an act of an oil or gas lessee or his authorized representative results in injury to both the surface owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to one or more oil or gas Lessee, or his authorized representative, such lessee or said representative shall join in the appointment of an arbitrator.

(f) Any two of the arbitrators may make a decision as to the amount of damage due. The decision shall be in writing and shall be served forthwith upon the parties in interest. Each party shall have 90 days from the date the decision is served in which to file an action in a court of competent jurisdiction. If no such action is filed within said time and the award is against Lessee or his/her authorized representative, he/she shall pay the same, together with interest at an annual rate established for the Internal Revenue Service from date of award, within 10 days after the expiration of said period for filing an action.

(g) Lessee or his authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

§ 226.22 Prohibition of pollution.

(a) All operators, contractors, drillers, service companies, pipe pulling and salvaging contractors, or other persons, shall at all times conduct their operations and drill, equip, operate, produce, plug and abandon all wells drilled for oil or gas, service wells or exploratory wells (including seismic, core and stratigraphic holes) in a manner that will prevent pollution and the migration of oil, gas, salt water or other substance from one stratum into another, including any fresh water bearing formation.

(b) Pits for drilling mud or deleterious substance used in the drilling, completion, recompletion, or workover of any well shall be constructed and maintained to prevent pollution of surface and subsurface fresh water. These pits shall be enclosed with a fence of at least four strands of barbed wire, or an approved substitute, stretched taut to adequately braced corner posts, unless the surface owner, user, or the Superintendent gives consent to the contrary. Immediately after completion of operations, pits shall be emptied and leveled unless otherwise requested by surface owner or user.

(c) Drilling pits shall be adequate to contain mud and other material extracted from wells and shall have adequate storage to maintain a supply of mud for use in emergencies.

(d) No earthen pit, except those used in the drilling, completion, recompletion or workover of a well, shall be constructed, enlarged, reconstructed or used without approval of the Superintendent. Unlined earthen pits shall not be used for the continued storage of salt water or other deleterious substances.

(e) Deleterious fluids other than fresh water drilling fluids used in drilling or workover operations, which are displaced or produced in well completion or stimulation procedures, including but not limited to fracturing, acidizing, swabbing, and drill stem tests, shall be collected into a pit lined with plastic of at least 30 mil or a metal tank and maintained separately from above-mentioned drilling fluids to allow for separate disposal.

§ 226.23 Easements for wells off leased premises.

The Superintendent, with the consent of the Osage Tribal Council, may grant commercial and noncommercial easements for wells off the leased premises to be used for purposes associated with oil and gas production. Rental payable to the Osage Tribe for such easements shall be an amount agreed to by Grantee and the Osage Tribal Council subject to the approval of the Superintendent. Grantee shall be responsible for all damages resulting from the use of such wells and settlement therefor shall be made as provided in § 226.21.

§ 226.24 Lessee's use of water.

Lessee or his contractor may, with the approval of the Superintendent, use water from streams and natural water courses to the extent that same does not diminish the supply below the requirements of the surface owner from whose land the water is taken. Similarly, Lessee or his contractor may use water from reservoirs formed by the impoundment of water from such streams and natural water courses, provided such use does not exceed the quantity to which they originally would have been entitled had the reservoirs not been constructed. Lessee or his contractor may install necessary lines and other equipment within the Osage Mineral Estate to obtain such water. Any damage resulting from such installation shall be settled as provided in § 226.21.

§ 226.25 Gas well drilled by oil lessees and vice versa.

Prior to drilling, the oil or gas lessee shall notify the other lessees of his/her intent to drill. When an oil lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the gas lessee in drilling a well encounters a formation or zone having indication of possible oil production, he/she shall immediately notify the other lessee and the Superintendent. Lessee drilling the well shall obtain all information which a prudent operator utilizes to evaluate the productive capability of such formation or zone.

(a) *Gas well to be turned over to gas lessee.* If the oil lessee drills a gas well, he/she shall, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the gas lessee and the Superintendent. If the gas lessee does not, within 45 days after receiving notice and cost of drilling, elect to take over such well and reimburse the oil lessee the cost of drilling, including all damages paid and the cost in-place of casing, tubing, and other equipment, the oil lessee shall immediately confine the gas to the original stratum. The disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

(b) Oil well to be turned over to oil lessee. If the gas lessee drills an oil well, he/she must immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the superintendent.

(1) If the oil lessee does not, within 45 days after receipt of notice and cost of drilling, elect to take over the well, he/she must immediately notify the gas lessee. From that point, the superintendent must approve the disposition of the well, and any gas produced from it.

(2) If the oil lessee chooses to take over the well, he/she must pay to the gas lessee:

(i) The cost of drilling the well, including all damages paid; and

(ii) The cost in place of casing and other equipment.

(3) If the oil lessee and the gas lessee cannot agree on the cost of the well, the superintendent will apportion the cost between the oil and gas lessees. If the lessees do not accept the apportionment, the oil or gas lessee who drilled the well must plug the well.

(c) *Lands not leased.* If the gas lessee shall drill an oil well upon lands not leased for oil purposes or vice versa, the Superintendent may, until such time as said lands are leased, permit the lessee who drilled the well to operate and market the production therefrom. When said lands are leased, the lessee who drilled and completed the well shall be reimbursed by the oil or gas lessee, for the cost of drilling said well, including all damages paid and the cost in-place of casing, tubing, and other equipment. If the lessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom shall be determined by the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

§ 226.26 Determining cost of well.

The term "cost of drilling" as applied where one lessee takes over a well drilled by another, shall include all reasonable, usual, necessary, and proper expenditures. A list of expenses mentioned in this section shall be presented to proposed purchasing lessee within 10 days after the completion of the well. In the event of a disagreement between the parties as to the charges assessed against the well that is to be taken over, such charges shall be determined by the Superintendent.

§ 226.27 Gas for operating purposes and tribal use.

(a) *Gas to be furnished oil lessee.* Lessee of a producing gas lease shall furnish the oil lessee sufficient gas for operating purposes at a rate to be agreed upon, or on failure to agree the rate shall be determined by the Superintendent: *Provided,* That the oil lessee shall at his own expense and risk, furnish and install the necessary connections to the gas lessee's well or pipeline. All such connections shall be reported in writing to the Superintendent.

(b) *Use of gas by Osage Tribe.* (1) Gas from any well or wells shall be furnished any Tribal-owned building or enterprise at a rate not to exceed the price less royalty being received or offered by a gas purchaser: *Provided,* That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the rate to be paid by the Osage Tribe shall be determined by the Superintendent based on prices being paid by purchasers in the Osage Mineral Estate. The Osage Tribe is to furnish all necessary material and labor for such connection with Lessee's gas system. The use of such gas shall be at the risk of the Osage Tribe at all times.

(2) Any member of the Osage Tribe residing in Osage County and outside a corporate city is entitled to the use at his own expense of not to exceed 400,000 cubic feet of gas per calendar year for his principal residence at a rate not to exceed the amount paid by a gas purchaser plus 10 percent: *Provided,* That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the amount to be paid by the Tribal member shall be determined by the Superintendent. Gas to Tribal members is not royalty free. The Tribal member is to furnish all necessary material and labor for such connection to Lessee's gas system, and shall maintain his own lines. The use of such gas shall be at the risk of the Tribal member at all times.

(3) Gas furnished by Lessee under paragraphs (b)(1) and (2) of this section may be terminated only with the approval of the Superintendent. Written application for termination must be made to the Superintendent showing justification.

Cessation of Operations

§ 226.28 Shutdown, abandonment, and plugging of wells.

No productive well shall be abandoned until its lack for further profitable production of oil and/or gas has been demonstrated to the satisfaction of the Superintendent. Lessee shall not shut down, abandon, or otherwise discontinue the operation or use of any well for any purpose without the written approval of the Superintendent. All applications for such approval shall be submitted to the Superintendent on forms furnished by him/her.

(a) Application for authority to permanently shut down or discontinue use or operation of a well shall set forth justification, probable duration the means by which the well bore is to be protected, and the contemplated eventual disposition of the well. The method of conditioning such well shall be subject to the approval of the Superintendent.

(b) Prior to permanent abandonment of any well, the oil lessee or the gas lessee, as the case may be, shall offer the well to the other for his recompletion or use under such terms as may be mutually agreed upon but not in conflict with the regulations. Failure of the Lessee receiving the offer to reply within 10 days after receipt thereof shall be deemed as rejection of the offer. If, after indicating acceptance, the two parties cannot agree on the terms of the offer within 30 days, the disposition of such well shall be determined by the Superintendent.

(c) The Superintendent is authorized to shut in a lease when the lessee fails to comply with the terms of the lease, the regulations, and/or orders of the Superintendent.

§ 226.29 Disposition of casings and other improvements.

(a) Upon termination of lease, permanent improvements, unless otherwise provided by written agreement with the surface owner and filed with the Superintendent, shall remain a part of said land and become the property of the surface owner upon termination of the lease, other than by cancellation. Exceptions include personal property not limited to tools, tanks, pipelines, pumping and drilling equipment, derricks, engines, machinery, tubing, and the casings of all wells: Provided, That when any lease terminates, all such personal property shall be removed the word "terminates"; and in the last sentence of the paragraph, within 90 days or such reasonable extension of time as may be granted by the Superintendent. Otherwise, the ownership of all casings shall revert to Lessor and all other personal property and permanent improvements to the surface owner. Nothing herein shall be construed to relieve lessee of responsibility for removing any such personal property or permanent improvements from the premises if required by the Superintendent and restoring the premises as nearly as practicable to the original state.

(b) Upon cancellation of lease. When there has been a cancellation for cause, Lessor shall be entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

(c) Wells to be abandoned shall be promptly plugged as prescribed by the Superintendent. Applications to plug shall include a statement affirming compliance with § 226.28(b) and shall set forth reasons for plugging, a detailed statement of the proposed work including kind, location, and length of plugs (by depth), plans for mudding and cementing, testing, parting and removing casing, and any other pertinent information: *Provided,* That the Superintendent may give oral permission and instructions pending receipt of a written application to plug a newly drilled hole. Lessee shall remit a fee of $15 with each written application for authority to plug a well. This fee will be refunded if permission is not granted.

(d) Lessee shall plug and fill all dry or abandoned wells in a manner to confine the fluid in each formation bearing fresh water, oil, gas, salt water, and other minerals, and to protect it against invasion of fluids from other sources. Mud-laden fluid, cement, and other plugs shall be used to fill the hole from bottom to top: *Provided,* That if a satisfactory agreement is reached between Lessee and the surface owner, subject to the approval of the Superintendent, Lessee may condition the well for use as a fresh water well and shall so indicate on the plugging record. The manner in which plugging material shall be introduced and the type of material so used shall be subject to the approval of the Superintendent. Within 10 days after plugging, Lessee shall file with the Superintendent a complete report of the plugging of each well. When any well is plugged and abandoned, Lessee shall, within 90 days, clean up the premises around such well to the satisfaction of the Superintendent.

Requirements of Lessees

§ 226.30 Lessees subject to Superintendent's orders; books and records open to inspection.

Lessee shall comply with all orders or instructions issued by the Superintendent. The Superintendent or his representative may enter upon the leased premises for the purpose of inspection. Lessee shall keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required. Lessee's books and records shall be available to the Superintendent for inspection.

§ 226.31 Lessee's process agents.

(a) Before actual drilling or development operations are commenced on leased lands, Lessee or Assignee, if not a resident of the State of Oklahoma, shall appoint a local or resident representative within the State of Oklahoma on whom the Superintendent may serve notice or otherwise communicate in securing compliance with the regulations in this part, and shall notify the Superintendent of the name and post office address of the representative appointed.

(b) Where several parties own a lease jointly, one representative or agent shall be designated whose duties shall be to act for all parties concerned. Designation of such representative should be made by the party in charge of operations.

(c) In the event of the incapacity or absence from the State of Oklahoma of such designated local or resident representative, Lessee shall appoint a substitute to serve in his stead. In the absence of such representative or appointed substitute, any employee of Lessee upon the leased premises or person in charge of drilling or related operations thereon shall be considered the representative of Lessee for the purpose of service of orders or notices as herein provided.

§ 226.32 Well records and reports.

(a) Lessee shall keep accurate and complete records of the drilling, redrilling, deepening, repairing, treating, plugging, or abandonment of all wells. These records shall show all the formations penetrated, the content and character of oil, gas, or water in each formation, and the kind, weight, size, landed depth and cement record of casing used in drilling each well; the record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, and the like; the materials and procedure used in the treating or plugging of wells or in preparing them for temporary abandonment; and any other information obtained in the course of well operation.

(b) Lessee shall take such samples and make such tests and surveys as may be required by the Superintendent to determine conditions in the well or producing reservoir and to obtain information concerning formations drilled, and shall furnish reports thereof as required by the Superintendent.

(c) Within 10 days after completion of operations on any well, Lessee shall transmit to the Superintendent the applicable information on forms furnished by the Superintendent; a copy of electrical, mechanical or radioactive log, or other types of survey of the well bore; and core analysis obtained from the well. Lessee shall also submit other reports and records of operations as may be required and in the manner and form prescribed by the Superintendent.

(d) Lessee shall measure production of oil, gas, and water from individual wells at reasonably frequent intervals to the satisfaction of the Superintendent.

(e) Upon request and in the manner and form prescribed by the Superintendent, Lessee shall furnish a plat showing the location, designation, and status of all wells on the leased lands, together with such other pertinent information as the Superintendent may require.

§ 226.33 Line drilling.

Lessee shall not drill within 300 feet of boundary line of leased lands, nor locate any well or tank within 200 feet of any public highway, any established watering place, or any building used as a dwelling, granary, or barn, except with the written permission of the Superintendent. Failure to obtain advance written permission from the Superintendent shall subject lessee to cancellation of his/her lease and/or plugging of the well.

§ 226.34 Wells and tank batteries to be marked.

Lessee shall clearly and permanently mark all wells and tank batteries in a conspicuous place with number, legal description, operator, and telephone number, and shall take all necessary precautions to preserve these markings.

§ 226.35 Formations to be protected.

Lessee shall, to the satisfaction of the Superintendent, take all proper precautions and measures to prevent damage or pollution of oil, gas, fresh water, or other mineral bearing formations.

§ 226.36 Control devices.

In drilling operations in fields where high pressures, lost circulation, or other conditions exist which could result in blowouts, lessee shall install an approved gate valve or other controlling device which is in proper working condition for use until the well is completed. At all times preventative measures must be taken in all well operations to maintain proper control of subsurface strata.

§ 226.37 Waste of oil and gas.

Lessee shall conduct all operations in a manner that will prevent waste of oil and gas and shall not wastefully utilize oil or gas. The Superintendent shall have the authority to impose such requirements as he deems necessary to prevent waste of oil and gas and to promote the greatest ultimate recovery of oil and gas. Waste as applied herein includes, but is not limited to, the inefficient excessive or improper use or dissipation of reservoir energy which would reasonably reduce or diminish the quantity of oil or gas that might ultimately be produced, or the unnecessary or excessive surface loss or destruction, without beneficial use, of oil and/or gas.

§ 226.38 Measuring and storing oil.

All production run from the lease shall be measured according to methods and devices approved by the Superintendent. Facilities suitable for containing and measuring accurately all crude oil produced from the wells shall be provided by Lessee and shall be located on the leasehold unless otherwise approved by the Superintendent. Lessee shall furnish to the Superintendent a copy of 100-percent capacity tank table for each tank. Meters and installations for measuring oil must be approved, and tests of their accuracy shall be made when directed by the Superintendent.

§ 226.39 Measurement of gas.

All gas, required to be measured, shall be measured by meter (preferably of the orifice meter type) unless otherwise agreed to by the Superintendent. All gas meters must be approved by the Superintendent and installed at the expense of Lessee or purchaser at such places as may be agreed to by the Superintendent. For computing the volume of all gas produced, sold or subject to royalty, the standard of pressure shall be 14.65 pounds to the square inch, and the standard of temperature shall be 60 degrees F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized in writing by the Superintendent.

§ 226.40 Use of gas for lifting oil.

Lessee shall not use natural gas from a distinct or separate stratum for the purpose of flowing or lifting the oil, except where said Lessee has an approved right to both the oil and the gas, and then only with the approval of the Superintendent of such use and of the manner of its use.

§ 226.41 Accidents to be reported.

Lessee shall make a complete report to the Superintendent of all accidents, fires, or acts of theft and vandalism occurring on the leased premises.

Penalties

§ 226.42 Penalty for violation of lease terms.

Violation of any of the terms or conditions of any lease or of the regulations in this part shall subject the lease to cancellation by the Superintendent, or Lessee to a fine of not more than $500 per day for each day of such violation or noncompliance with the orders of the Superintendent, or to both such fine and cancellation. Fines not received within 10 days after notice of the decision shall be subject to late charges at the rate of not less than 11/2 percent per month for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charge.

§ 226.43 Penalties for violation of certain operating regulations.

In lieu of the penalties provided under § 226.42, penalties may be imposed by the Superintendent for violation of certain sections of the regulations of this part as follows:

(a) For failure to obtain permission to start operations required by § 226.16(b), $50 per day until permission is obtained.

(b) For failure to file records required by § 226.32, $50 per day until compliance is met.

(c) For failure to mark wells and tank batteries as required by § 226.34, $50 for each well and tank battery.

(d) For failure to construct and maintain pits as required by § 226.22, $50 for each day after operations are commenced on any well until compliance is met.

(e) For failure to comply with § 226.36 regarding valve or other approved controlling device, $100.

(f) For failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well, as required by §§ 226.16(c) and 226.25, $200.

(g) For failure to properly care for and dispose of deleterious fluids as provided in § 226.22, $500 per day until compliance is met.

(h) For failure to file plugging reports as required by § 226.29 and for failure to file reports as required by § 226.13, $50 per day for each violation until compliance is met.

(i) For failure to perform or start an operation within 5 days after ordered by the Superintendent in writing under authority provided in this part, if said operation is thereafter performed by or through the Superintendent, the actual cost of performance thereof, plus 25 percent.

(j) Lessee or his/her authorized representative is hereby notified that criminal procedures are provided by 18 U.S.C. 1001 for knowingly filing fraudulent reports and information.

Appeals and Notices

§ 226.44 Appeals.

Any person, firm or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, by virtue of the regulations in this part, may appeal pursuant to 25 CFR part 2.

§ 226.45 Notices.

Notices and orders issued by the Superintendent to the representative and/or operator shall be binding on the lessee. The Superintendent may in his/her discretion increase the time allowed in his/her orders and notices.

§ 226.46 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in this part need not be submitted for clearance pursuant to 44 U.S.C. 3501 *et seq.*

Dated: June 6, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–14127 Filed 6–16–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0516]

RIN 1625–AA08

Special Local Regulation; Dragon Boat Races; Maumee River; Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation controlling movement of vessels for certain waters of the Maumee River. This action is necessary and is intended to ensure safety of life on navigable waters to be used for a rowing event immediately prior to, during, and immediately after this event. This regulation requires vessels to maintain a minimum speed for safe navigation and maneuvering.

DATES: This temporary final rule is effective from 6 a.m. until 6 p.m. on June 18, 2016. For the purposes of enforcement, actual notice will be used on June 18, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0516 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Petty Officer Brett Kreigh, Marine Safety Unit Toledo, Coast Guard; telephone 419–418–6046, email *Brett.A.Kreigh@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive Order
NAD 83	North American Datum of 1983
NPRM	Notice of Proposed Rulemaking

II. Background History and Regulatory Information

On June 18, 2016, Partners In Education is holding an organized Dragon Boat Race event that will take place on the Maumee River in which participants paddle Hong Kong style Dragon Boats on the Maumee River in Toledo, OH. Due to the projected amount of human-powered watercraft on the water, there is a need to require vessels in the affected waterways to maintain a minimum speed for safe navigation. The Rowing regatta will occur between 6 a.m. and 6 p.m. on June 18, 2016. This event is taking place under the same sponsorship in the same location as last year.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 33 CFR 1.05–1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. Having reviewed the application for a marine event submitted by the sponsor on February 22, 2016, the Captain of the Port Detroit (COTP) has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to a rowing regatta along the water pose extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a Special Local Regulation around the event location to help minimize risks to safety of life and property during this event.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because waiting for a notice and comment period to run would be impracticable, unnecessary, and contrary to the public interest. Although an initial marine event application was submitted on February 22, 2016, final details regarding event area and patrol parameters were not known to the Coast Guard with sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, delaying the effective date of this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this rowing regatta.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

IV. Discussion of Rule

This rule establishes a temporary special local regulation from 6 a.m. until 6 p.m. on June 18, 2016. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. This special local regulation will encompass all U.S. navigable waters of the Maumee River, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41°39′5.27″ N.; 083°31′34.01″ W. straight across the river along the Cherry Street bridge to position 41°39′12.83″ N.; 083°31′42.58″ W. and a line extending from a point of land just south of International Park at position 41°38′46.62″ N.; 083°31′50.54″ W. straight across the river to the shore adjacent to position 41°38′47.37″ N.; 083°32′2.05″ W. (NAD 83).

An on-scene representative of the COTP or event sponsor representatives may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state or local law enforcement vessel assigned to patrol the event. Vessel operators desiring to transit through the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The COTP or his designated on-scene representative may be contacted via VHF Channel 16.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders (E.O.).

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 or under section 1 of E.O. 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The Coast Guard's use of this special local regulation will be of relatively small size and only twelve hours in duration, and it is designed to minimize the impact on navigation. Moreover, vessels may transit through the area affected by this special local regulation at a minimum speed for safe navigation. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

B. Impact on Small Entities

As per the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, we have considered the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Maumee River, in the vicinity of Toledo, OH between 6 a.m. and 6 p.m. on June 18, 2016.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the regulation, Coast Guard Sector Detroit will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

F. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Energy Effects

This action is not a "significant energy action" under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

M. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation and is therefore categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T09–0516 to read as follows:

§ 100.35T09–0516 Special Local Regulation; Dragon Boat Races; Maumee River; Toledo, OH.

(a) *Regulated area.* A regulated area is established to encompass the following waterway: all waters of the Maumee River, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41°39′5.27″ N.; 083°31′34.01″ W. straight across the river along the Cherry Street bridge to position 41°39′12.83″ N.; 083°31′42.58″ W. and a line extending from a point of land just south of International Park at position 41°38′46.62″ N.; 083°31′50.54″ W. straight across the river to the shore adjacent to position 41°38′47.37″ N.; 083°32′2.05″ W. (NAD 83).

(b) *Effective period.* This rule will be enforced from 6 a.m. until 6 p.m. on June 18, 2016.

(c) *Regulations.* (1) Consistent with § 100.901 of this part, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant at all times. Additionally, vessels within the regulated area must yield right-of-way for event participants and event safety craft. Commercial vessels will have right-of-way over event participants, and event safety craft.

(2) Vessel operators desiring to operate in the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port Detroit (COTP) or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to operate within the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

(3) The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the COTP to act on his behalf.

Dated: 10 June 2016.

Raymond Negron,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2016–14345 Filed 6–16–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0533]

Drawbridge Operation Regulation; Reynolds Channel, Nassau County, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Long Beach Bridge, mile 4.7, across Reynolds Channel, at Nassau County, New York. This temporary deviation is necessary to facility public safety during a public event, the Annual Fireworks Display.

DATES: This deviation is effective from 9:30 p.m. on July 8, 2016 to 11:30 p.m. on July 9, 2016.

ADDRESSES: The docket for this deviation, USCG–2016–0533, is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *Judy.K.Leung-Yee@uscg.mil*.

SUPPLEMENTARY INFORMATION: The bridge owner, Nassau County Department of Public Works, requested this temporary deviation from the normal operating schedule to facilitate a public event, the Annual Fireworks Display.

The Long Beach Bridge, mile 4.7, across Reynolds Channel has a vertical clearance in the closed position of 22 feet at mean high water and 24 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(g).

Reynolds Channel is transited by commercial and recreational traffic.

Under this temporary deviation, the Long Beach Bridge may remain in the closed position between 9:30 p.m. and 11:30 p.m. on July 8, 2016 (rain date: July 9, 2016 between 9:30 p.m. and 11:30 p.m.).

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridges will not be able to open for emergencies and there are no immediate alternate routes for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 14, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–14348 Filed 6–16–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0280; FRL–9947–81–Region 7]

Approval of Iowa's State Implementation Plan (SIP); Definition of Greenhouse Gas and Prevention of Significant Deterioration (PSD) Plantwide Applicability Limits (PALs) Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two SIP revisions submitted by the State of Iowa. First, EPA is approving the definition of greenhouse gas, which will make the state's definition consistent with the Federal definition, and add greenhouse gases to emission inventory requirements. Second, EPA is approving Iowa's revision to its Prevention of Significant Deterioration (PSD) program, specifically to the definition of "subject to regulation," and to adopt by reference the most recent Federal plantwide applicability limitations (PALs) provisions.

DATES: This direct final rule is effective August 16, 2016, without further notice, unless EPA receives adverse comment by July 18, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0280, to *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7039, or by email at *Hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refers to EPA.

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is approving into the Iowa SIP the definition of greenhouse gas which is consistent with the Federal definition, and approving the requirement for facilities to include greenhouse gases in the emissions inventory. On November 4, 2008, Iowa submitted a SIP revision to EPA for several administrative revisions, including the request to amend the definition of greenhouse gas, and to include greenhouse gases for the purposes of emissions inventories. On December 9, 2009 (74 FR 68692), EPA approved many portions of the SIP revisions, but we did not act on either of these particular provisions.

EPA is also approving revisions to the Iowa Prevention of Significant Deterioration (PSD) program rules to revise the definition of "subject to regulation," by citing the most recent Federal reference to the greenhouse gas definition, and adding a sentence to clarify that the stationary source shall not be subject to regulation if the total sourcewide emissions are below the greenhouse gas plantwide applicability limitations (PALs) and meet the requirements in Iowa Administrative Code (IAC) 567–33.9(455B) (also being revised with this action), and the source complies with the PALs permit containing the greenhouse gases PALs.

IAC 567–33.9(455B), "Plantwide Applicability Limitations," is being revised to adopt by reference to cite the Federal regulations as of July 12, 2012, except that the term "Administrator" will mean "the department of natural resources."

Additional information for this rulemaking can be found in the Technical Support Document located in this docket.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. Public hearings were conducted for each of the submissions and no comments were received. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained in the Technical Support Document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

With this direct final action, the greenhouse gas definition is being added to the Iowa SIP as it is consistent with the Federal definition. Greenhouse gases are also included as applied to emissions inventories.

EPA is also approving into the Iowa SIP revisions to the PSD program rules, specifically revising the definition of "subject to regulation." This revision also adopts by reference the Federal PAL provision for greenhouse gases. (77 FR 41051).

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: June 3, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. In § 52.820, amend the table in paragraph (c) by revising the entries for 567–20.2, 567–21.1, 567–33.3, and 567–33.9 to read as follows:

§ 52.820 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
*	*	*	*	*
Chapter 20—Scope of Title—Definitions—Forms—Rules of Practice				
*	*	*	*	*
567–20.2	Definitions	5/7/08	6/17/16 and [Insert **Federal Register** citation].	The definitions for anaerobic lagoon, odor, and odorous substance are not SIP approved.
*	*	*	*	*
Chapter 21—Compliance				
567–21.1	Compliance Schedule	5/7/08	6/17/16 and [Insert **Federal Register** citation].	
*	*	*	*	*
Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality				
*	*	*	*	*
567–33.3	Special Construction Permit Requirements for Major Stationary Sources in Areas Designated Attainment or Unclassified (PSD).	7/17/13	6/17/16 and [Insert **Federal Register** citation].	
567–33.9	Plantwide Applicability Limitations	7/17/13	6/17/16 and [Insert **Federal Register** citation].	

* * * * *

[FR Doc. 2016–14282 Filed 6–16–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385

[Docket No. FMCSA–2016–0120]

RIN 2126–AB92

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends its Hazardous Materials Safety Permits rules to update the current incorporation by reference of the Commercial Vehicle Safety Alliance's (CVSA) "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403." Currently the rules reference the April 1, 2015, edition of the out-of-service criteria and, through this final rule, FMCSA incorporates the April 1, 2016, edition.

DATES: Effective June 17, 2016. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 17, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Federal Motor Carrier Safety Administration, Office of Policy, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–9209 or via email *michael.huntley@dot.gov.* Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing the docket, contact Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2016–0120 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT although this action adopts a final rule and, thus, comments are not solicited, DOT accepts comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Executive Summary

This rulemaking updates an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b)(1). The rules currently reference the April 1, 2015, edition of "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403." In this final rule, FMCSA incorporates the April 1, 2016, edition.

Ten actions were completed to update the 2016 edition of the handbook and distinguish it from the previous edition of the handbook. The revision does not impose new requirements or substantively amend the Code of Federal Regulations.

III. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to improve the safety of hazardous materials transported in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of the Department of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous material safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87 to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations to address the congressional mandate. Such regulations on hazardous materials are the underlying provisions that have utilized the material incorporated by reference discussed in this notice.

The Administrative Procedure Act (APA) (5 U.S.C. 553) specifically provides that adherence to its notice and public comment rulemaking procedures are not required where the Agency finds there is good cause to dispense with such procedures (and incorporates the finding and a brief statement of reasons to support the finding in the rules issued). Generally, good cause exists where the Agency determines that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553 (b)(3)(B)). This document updates an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b)(1). As discussed in detail below, this revision does not impose new requirements or substantively change the Code of Federal Regulations. For these reasons, the FMCSA finds good cause that notice and public comment procedures are unnecessary.

IV. Background

Currently, 49 CFR 385.415 prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b)(1) requires that motor carriers must ensure a pre-trip inspection be performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403." With regard to the specific edition of the out-of-service criteria, 49 CFR 385.4, as amended on June 18, 2015 (80 FR 34839), references the April 1, 2015, edition. This final rule amends § 385.4(b) by replacing the reference to the April 1, 2015, edition date with the new edition date of April 1, 2016.

FMCSA has reviewed the April 1, 2016, edition and determined there are no substantive changes that would result in motor carriers being subjected to a new or amended standard. The changes are outlined below for reference. It is necessary to update the reference to ensure that motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria that are referenced in the rules.

There were ten actions taken to update the 2016 edition that distinguish it from the previous edition of the handbook. Additional conforming changes have been made to the table of contents, but those are not included in this summary. (All references are to the April 1, 2016, North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.) The first action addresses consistency with 49 CFR 383.25, the out-of-service condition that prohibits drivers from holding a commercial driver's learner's permit (CLP) and transporting passengers. (Part I, Item 3.b.) This action updates the language used in the criteria to align with the regulatory language and is not a substantive change. The second and third actions modified the language regarding medical certificates and how to handle Canadian Class 5 or G licenses. These updates occur in Part I, Item 4 (Driver Medical/Physical Requirements). Part I, Item 4.b.(3) is necessary due to recent changes in FMCSA policy regarding the verification of a valid medical certificate. And, the note that clarifies how to handle the discrepancy when applying Canadian and U.S. driver medical requirements was amended in section 4.b., to require Canadian drivers operating a commercial motor vehicle within the United States with a valid Class 5 or G license to provide evidence of compliance with medical requirements. FMCSA views these changes as non-substantive, as they are already found in the relevant U.S. or Canadian regulations.

The fourth action in Part II, Item 2 (Cargo Securement, Tiedown Defect Table) involves an adjustment made to the table that would eliminate the possibility of an inspector declaring a vehicle out-of-service for a defect-only violation instead of an out-of-service condition. The Agency does not consider this a substantive change.

The fifth action adds language to (Driveline/Driveshaft) specifically, Part II, Item 4.b. which indicates that a missing bearing cap retainer clip is a condition for placing a vehicle out-of-service. This addition is not considered substantive, as it acknowledges that light duty vehicles may use retainer clips as opposed to bolts to secure the bearing cap. Because a missing bolt had previously been determined to be an out-of-service condition, it was determined that a missing bearing cap retainer clip should similarly be considered an out-of-service condition. Modification of language in Part II, Item 7 (Fuel Systems) is the sixth action taken to address the criteria and it consolidates and clarifies the section on the measurement of gaseous fuels. Again, this change is not considered substantive as it clarifies, based on consultation and input from industry experts, that a leak measured to be below 5,000 parts per million is not an imminent hazard and, therefore, not an out-of-service condition.

The seventh action, Part II (Lighting Devices), Item 8 involves the creation of new out-of-service criteria that resolves situations where a trailer light cord is either left unplugged, had become unplugged in transit, or there was a defect in the cord or connector that causes all or many of the trailer lamps to become inoperative. It was determined that in these situations, a single out-of-service condition would be recorded rather than multiple out-of-service conditions listed for the single defect, the cord or connector. Because inoperable lamps on the rear of trailers are already an out-of-service condition, this is not a substantive change.

In the eighth action, language was amended to the out-of-service criteria from Part II, Item 9.f. Steering Mechanisms that would quantify how loose a power assist cylinder must be in order to warrant placing the CMV out-of-service. The revision clarifies the existing language and is not a substantive change.

The ninth action required in Part II, Item 10.b. Suspensions adds a clarifying note and reference to an existing operational policy that explains what a secondary air bag is. FMCSA does not consider this to be a substantive change.

The final action establishes a new out-of-service condition for debris between tires in a dual set. This is not considered to be a substantive change, as the change was established to account for the infrequent event in which a solid object can become a projectile and impact a trailing vehicle when dislodged from between the tires of a dual tire set. In reality, these solid objects, when noticed, will be remedied on the spot with an inspector, so the likelihood of an ensuing out-of-service order is very low.

V. Regulatory Analyses

E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this action is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) did not, therefore, review this document.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.[1]

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in the legal basis section, this action is not subject to notice and comment under section 553(b) of the Administrative Procedure Act.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult the FMCSA point of contact, Michael Huntley, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $155 million (which is the value equivalent to $100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any one year. This final rule will not result in such an expenditure.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule.

E.O. 13132 Federalism

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

FMCSA analyzed this rule under that Order and determined that it does not have implications for federalism.

E.O. 12988 Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045 Protection of Children

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, to include an evaluation of their environmental health and safety effects on children, if the agency has reason to believe that the rule may disproportionately affect children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could pose an environmental or safety risk that could disproportionately affect children.

E.O. 12630 Taking of Private Property

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII) or affect the privacy of individuals.

E.O. 12372 Intergovernmental Review

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

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[1] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html.*

The Agency has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects.

E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. FMCSA does not intend to adopt its own technical standard, thus there is no need to submit a separate statement to OMB on this matter. The standard being incorporated in this final rule is discussed in detail in section IV, Background, and is reasonably available through the CVSA Web site.

Environment (NEPA, CAA, Environmental Justice)

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The content in this rule is covered by this CE and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA has determined that this rule has no environmental justice implications, nor does its promulgation cause any collective environmental impact.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, part 385, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 13901–13905, 31133, 31135, 31136, 31137, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88 109 Stat. 803, 958 Sec. 350 of Pub. L. 107–87; and 49 CFR 1.87.

■ 2. Revise § 385.4(b) to read as follows:

§ 385.4 Matter incorporated by reference.

* * * * *

(b) "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403," April 1, 2016; incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87 on: June 10, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–14245 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151210999–6348–02]

RIN 0648–XE681

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship North Access Area to General Category Individual Fishing Quota Scallop Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Nantucket Lightship North Scallop Access Area will close to Limited Access General Category Individual Fishing Quota scallop vessels for the remainder of the 2016 fishing year as of the effective date below. No vessel issued a Limited Access General Category Individual Fishing Quota permit may fish for, possess, or land scallops from the Nantucket Lightship North Scallop Access Area. Regulations require this action once it is projected that 100 percent of trips allocated to the Limited Access General Category Individual Fishing Quota scallop vessels for the Nantucket Lightship North Scallop Access Area will be taken.

DATES: Effective 0001 hr local time, June 16, 2016, through February 28, 2017.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, (978) 282–8456.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the Sea Scallop Access Areas can be found in 50 CFR 648.59 and 648.60. These regulations authorize vessels issued a valid Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) scallop permit to fish in the Nantucket Lightship North Scallop Access Area under specific conditions, including a total of 485 trips that may be taken during the 2016 fishing year. Section 648.60(g)(3)(iii) requires the Nantucket Lightship North Scallop

Access Area to be closed to LAGC IFQ permitted vessels for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that the allowed number of trips for fishing year 2016 are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Nantucket Lightship North Scallop Access Area, analysis of fishing effort, and other information, NMFS projects that 485 trips will be taken as of June 16, 2016. Therefore, in accordance with § 648.60(g)(3)(iii), NMFS is closing the Nantucket Lightship North Scallop Access Area to all LAGC IFQ scallop vessels as of June 16, 2016. No vessel issued an LAGC IFQ permit may fish for, possess, or land scallops in or from the Nantucket Lightship North Scallop Access Area after 0001 local time, June 16, 2016. Any LAGC IFQ vessel that has declared into the Nantucket Lightship North Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area before 0001, June 16, 2016, may complete its trip without being subject to this closure. This closure is in effect for the remainder of the 2016 scallop fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866. NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The Nantucket Lightship North Scallop Access Area opened for the 2016 fishing year on May 4, 2016. The regulations at § 648.60(g)(3)(iii) require this closure to ensure that LAGC IFQ scallop vessels do not take more than their allocated number of trips in the Nantucket Lightship North Scallop Access Area. The projections of the date on which the LAGC IFQ fleet will have taken all of its allocated trips in an Access Area become apparent only as trips into the area occur on a real-time basis and as activity trends begin to appear. As a result, NMFS can only make an accurate projection very close in time to when the fleet has taken all of its trips. In order to propose a closure for purposes of receiving prior public comment, NMFS would need to make a projection based on very little information, which would result in a closure too early or too late. To allow LAGC IFQ scallop vessels to continue to take trips in the Nantucket Lightship North Scallop Access Area during the period necessary to publish and receive comments on a proposed rule would likely result in vessels taking much more than the allowed number of trips in the Nantucket Lightship North Scallop Access Area. Excessive trips and harvest from the Nantucket Lightship North Scallop Access Area would result in excessive fishing effort in the area, where effort controls are critical, thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures. Also, the public had prior notice and full opportunity to comment on this closure process when we put these provisions in place. For these same reasons, NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 14, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–14403 Filed 6–14–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160609505–6505–01]

RIN 0648–BG07

Fisheries of the Northeastern United States; Blueline Tilefish Fishery; Secretarial Interim Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements possession limits and permit requirements for the commercial and recreational blueline tilefish fisheries in waters north of the Virginia/ North Carolina border. These interim management measures are necessary to prevent a return to an unregulated fishery which could result in overfishing and to temporarily constrain fishing effort on the blueline tilefish stock while a long-term management plan is implemented. These measures are expected to constrain fishing mortality and help ensure the long-term sustainability of the stock, while potentially preventing overfishing.

DATES: Effective June 17, 2016, through December 14, 2016. Comments must be received on or before July 18, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2016–0063, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0063,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Blueline Tilefish Interim Measures."

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the Environmental Assessment and Regulatory Impact Review (EA/RIR), Supplemental Information Report (SIR), and other supporting documents for these interim measures are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. The EA/RIR and SIR are also accessible via the internet at: *www.greateratlantic.fisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341.

SUPPLEMENTARY INFORMATION:

Background

Blueline tilefish (*Caulolatilus microps*) are mainly distributed in Atlantic waters off the eastern United States, and have been managed as part of the South Atlantic Fishery Management Council's Snapper Grouper Fishery Management Plan (FMP). However, South Atlantic management measures do not apply to vessels fishing for blueline tilefish north of the South Atlantic Council's jurisdiction (which extends as far north as the Virginia/North Carolina border).

In recent years, there has been increasing recreational and commercial fishing activity for blueline tilefish in the unregulated mid-Atlantic portion of the Greater Atlantic Region, north of the jurisdiction of the South Atlantic Council's Snapper Grouper FMP. From 2005–2013, commercial landings in the Greater Atlantic Region (Virginia to Maine) averaged 11,000 lb (5 mt) per year. From 2002–2011, recreational charter/party vessels in this area reported an average of 2,400 fish per year. But after the South Atlantic Council's FMP implemented significant harvest limits to protect blueline tilefish under its jurisdiction, commercial landings in the unregulated mid-Atlantic portion of the blueline tilefish range increased to over 217,000 lb (98 mt) in 2014 and recreational landings from 2012–2014 increased to 10,000–16,000 fish per year. This rapid increase in blueline tilefish harvest in the Greater Atlantic Region poses a potential long-term risk to the conservation of the species and the substantial possibility of overfishing the stock.

Based upon these concerns about the effects of the unregulated harvest of blueline tilefish, the Mid-Atlantic Fishery Management Council submitted a request on March 10, 2015, for Secretarial emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act to implement temporary management measures for blueline tilefish in the Greater Atlantic Region. On June 4, 2015, NMFS published an emergency rule (80 FR 31864) to establish temporary management measures, including possession limits for the commercial and recreational sectors of the fishery and permitting and reporting requirements for commercial and for-hire vessels that fish for blueline tilefish north of the Virginia/North Carolina border. Then on November 30, 2015 (80 FR 74712), NMFS extended the emergency measures for an additional 186 days through June 3, 2016.

After requesting emergency action, the Mid-Atlantic Council began developing a plan for long-term management of this species. At its April 2015 meeting, the Council initiated scoping for either a new deep-water species complex FMP, with an initial focus on blueline tilefish, or an amendment to the Golden Tilefish FMP to add blueline tilefish to the management unit. After scoping hearings and review of public comments, the Council opted to initiate an amendment to the existing Golden Tilefish FMP. Following development of a range of management measures, the Council held a series of public meetings in March 2016 to solicit feedback on the measures contained in the draft amendment. On April 13, 2016, the Mid-Atlantic Council took final action to select preferred alternatives and approve the amendment for submission to NMFS for review and implementation. Due to the procedural and public participation requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, and the Administrative Procedure Act, and the need to fully deliberate and develop the amendment, it was not possible for the Council to prepare its final action for submission to NMFS for approval, and for NMFS to implement it, before the emergency measures expired.

NMFS anticipates that the action will be submitted to the Secretary of Commerce for review and approval during the summer of 2016. NMFS, acting on behalf of the Secretary of Commerce, will then conduct the formal review and approval process required by the Magnuson-Stevens Act and complete the necessary notice-and-comment rulemaking to implement the Council's recommended management measures. If approved, it is anticipated that permanent measures will be in place by the end of this year. However, the current emergency regulations have expired and the fishery would be unregulated in Federal waters until the Mid-Atlantic Council's recommended management measures can be formally reviewed and implemented. The potential for a dramatic increase in catch of blueline tilefish resulting from the fishery being unregulated could result in overfishing and pose a threat to the long-term sustainability of the resource. When the fishery was previously unregulated, substantial commercial and recreational landings were occurring in several states from New Jersey south. In the interim since emergency regulations have been put in place in Federal waters, all states from New Jersey south have implemented state measures that could constrain harvest if a lapse in Federal regulation occurs. However, there remains a substantial potential for unregulated landings to occur in states from New York north if the fishery returns to an extended unregulated state. Such landings would potentially subject the stock to overfishing and could have a long-term detrimental impact on the stock, even if the unregulated period is only a matter of months. Summer through early fall is typically the peak fishing period for blueline tilefish, so the lack of Federal regulations would occur right in this peak time.

Blueline tilefish is a data poor species throughout the Atlantic coast and particularly in the mid-Atlantic. There is not currently an overfishing limit established for this stock; therefore, it cannot yet be quantitatively determined if overfishing is occurring. In March 2016, the Mid-Atlantic Council's Scientific and Statistical Committee (SSC) reviewed all available information and for the first time set a target catch limit specifically for the mid-Atlantic fishery. For 2017, the SSC recommended an acceptable biological catch (ABC) of 87,031 lb (39.4 mt). Although this figure is not intended to apply to the 2016 fishing year, it provides a reasonable estimate of a target catch level that, if exceeded, would be expected to cause long-term harm to the stock. In 2014, when the harvest was unregulated, the total mid-Atlantic harvest was 274,972 lb (124.7 mt), and in 2015 it was 124,113 lb (56.3 mt) (this decrease from 2014 is likely due to the fact that the emergency rule went into effect in June 2015). The harvests for 2014 and 2015 were both dramatically higher than the new ABC of 87,031 lb (39.4 mt). As noted earlier, recreational harvest of blueline tilefish in the Greater Atlantic Region has been increasing steadily since 2011, while in 2014 commercial landings suddenly increased 20-fold over previous years. We do not have sufficient information to predict exactly how the resource would adapt to such a substantial increase in harvest. However, if the Mid-Atlantic blueline tilefish fishery were to return to an unregulated condition for an extended period of time, there is the strong potential for effort to expand as it did in 2014. Comparing potential 2016 catch to the recommended catch limit for 2017 creates a mismatch of evaluation across multiple years. However, because formal catch advice is only established at this point for 2017, it is informative by illustrating that if landings in 2016 return to pre-regulation levels, those catches would grossly exceed next year's catch advice by some 200 percent. Catch levels of such magnitude would be expected to have a significant impact on the stock and cause a serious risk of overfishing. We estimate that maintaining the current Federal management measures through this interim rule could constrain catch close to the SSC's ABC recommendation until the Golden Tilefish FMP amendment approved by the Mid-Atlantic Council in April 2016 can be implemented.

Continuing the existing possession and permit requirements in this interim rule is likely to prevent the potential for overfishing, if it is occurring, while we formally review the Mid-Atlantic Council's amendment and complete notice-and-comment rulemaking to implement that action.

Interim Management Measures

Consistent with the previously issued emergency rule and extension, we are implementing the following management measures for blueline tilefish in the Greater Atlantic Region:

1. A requirement for commercial or for-hire vessels landing blueline tilefish in the Greater Atlantic Region (*i.e.*, north of the latitude of the Virginia/North Carolina border: 36°33′01.0″ N. latitude) to hold a valid Greater Atlantic open access golden tilefish commercial or charter/party vessel permit, which are issued by the Greater Atlantic Regional Fisheries Office;
2. A commercial possession limit of 300 lb (136 kg) whole weight per trip; and
3. A recreational possession limit of seven blueline tilefish per person, per trip.

None of these management measures modify the existing possession regulations for golden tilefish, or any other species. The requirement to hold a valid Greater Atlantic permit will ensure that catch, effort, and fishing location information for blueline tilefish will be reported moving forward. The duration of these interim measures is limited by the Magnuson-Stevens Act to an initial period of 180 days. It is likely that the Council's amendment can be implemented before an extension expires. Such measures would supersede these interim measures.

Interim Management Measures Justification

NMFS has determined that this section 305(c) interim rule, directly following a section 305(c) emergency rule, independently meets the requirements in section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997). This action meets the requirements of section 305(c)(3) for interim rules because it is needed to prevent the potential of overfishing and deterioration of this stock while the proposed amendment to address blueline tilefish conservation is being reviewed for approval. While a definitive, qualitative overfishing limit has not been formally established for this data-poor stock, NMFS has determined that there is a potential for overfishing because, based on fishing activity for this stock in 2014, unregulated fishing in the mid-Atlantic portion of the blueline tilefish stock would likely exceed the proposed 2017 ABC by as much as 3 times or more.

This interim rule is also consistent with the Guidelines established for appropriate use of 305(c) emergency rules in 1997 (62 FR 44421, August 21, 1997). These guidelines state that emergency rules are only warranted when there are special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. The guidelines go on to state three criteria for approving a 305(c) emergency rule: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. Section 305(c) of the Magnuson-Stevens Act also provides for interim measures, which are a type of emergency rule.

There have been significant new information and developments since the implementation of the emergency rule that qualify as recently discovered circumstances not present until after the implementation of the 2015 emergency rule. When the emergency measures were first implemented, substantial discussions were beginning between the South Atlantic and Mid-Atlantic Councils about management jurisdiction for the portion of the stock north of the North Carolina/Virginia border. Since then, those discussions have led to definitive guidance that the Mid-Atlantic Council would develop management measures for the portion of the stock within its jurisdiction. Consistent with this conclusion, the Mid-Atlantic Council's SSC developed an ABC for the portion of the stock within its jurisdiction, which, as indicated above, is significantly below potential harvest levels if the fishery remains unregulated. These actions provided a clear directive, with specific ABC's, for the Mid-Atlantic Council to develop, consistent with the statutory requirements of the Magnuson-Stevens Act, a plan or plan amendment as envisaged by section 303 of the Act.

Due to the need to resolve questions about Council jurisdiction and the timing of receiving the SSC's recommendations, it was not possible for the Council to have completed the amendment and submitted it for Secretarial approval before the current emergency expired due to procedural and public participation requirements of applicable law. Therefore, the likelihood of a gap between the expiration of the emergency rule and implementation of the amendment was unavoidable and not due to Council inaction or delay. There is no doubt that these interim measures would significantly address a serious conservation problem for the blueline tilefish stock. Absent these interim measures, portions of the mid-Atlantic range of this stock will remain unregulated which could lead to substantial increases in fishing mortality and overfishing. Finally, the immediate benefits to the blueline tilefish resource outweigh the value of advance notice and public comment, particularly because this action continues the same measures already in place under the 2015 emergency rule which received public comments after it was published.

In addition to these interim measures independently meeting the emergency rule guidelines, NMFS also finds that back-to-back 305(c) rules is justified because he fishery was, and absent another Federal action will become again, unregulated in Federal waters. This is a very different situation than a fishery already under management by a Fishery Management Council and therefore presents a more exigent need for interim management. Although the blueline tilefish has not formally been declared to be subject to overfishing due to current lack of sufficient data, the need for this interim rule is consistent with the Magnuson-Stevens Act recognition in section 304(e) that such interim rules may be necessary while a council develops an amendment to address overfishing. Moreover, the 180-day period provided by these temporary interim measures should be sufficient to put in place permanent management measures. The Mid-Atlantic Council took final action in April 2016 and is expected to complete the necessary analyses and documentation for submission to the Secretary in the coming months. In turn, NMFS will then review and conduct notice-and-comment rulemaking on the Council's recommendations this fall/early winter. Because of this, NMFS is not inclined to extend the interim measures being implemented by this rule beyond 180 days even if subsequent delays occur within the Council's documentation development or within the Agency's review and rulemaking processes.

Classification

Based on reasons and findings cited above, NMFS has determined that this section 305(c) interim rule, following a section 305(c) emergency rule, is necessary and justified given the unusual and exigent circumstances surrounding the need to prevent an unregulated fishery and the likelihood of overfishing of blueline tilefish on a short-term basis. NMFS reviewed the requirements in section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997) and determined that this action, which is a type of emergency rule under section 305(c), is consistent with both the criteria and justifications for use of emergency measures in the Magnuson-Stevens Act.

Pursuant to section 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator (AA) for Fisheries, NOAA, finds that it would be impracticable and contrary to the public interest to provide for prior notice and opportunity for public comment. The current emergency measures expired on June 3, 2016, and the blueline tilefish fishery will return to an unregulated condition in Federal waters. Due to the uncertainty surrounding the timing of when the Mid-Atlantic Council would complete and submit to NOAA amendment to the Golden Tilefish FMP, it was not possible to prepare and publish a proposed rule to continue the current measures restricting landings of blueline tilefish. Based on the landings information from fishing activity in 2014, there is the potential for unregulated catch and landings to increase rapidly if these measures are not continued. Because there is a clear need to maintain measures to constrain fishing mortality on the stock in the Greater Atlantic Region and potentially prevent overfishing, it would be potentially harmful to the long-term sustainability of the resource to further delay implementation of these measures through notice-and-comment rulemaking. Moreover, the benefit of allowing prior public comment on this rule has been addressed because NMFS has already received public comment on these very same measures after the implementation of the 2015 emergency. These comments were taken into account in implementing this interim rule. Therefore, the public interest is best served by waiving the need for additional prior public comment in order to avoid the potential for long-term harm to the blueline tilefish stock. Public comments will be accepted on this temporary rule through *July 18, 2016*, and there will be opportunities for public participation and notice-and-comment rulemaking as we work to implement new management measures already developed and approved by the Mid-Atlantic Council.

Additionally, the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness pursuant to section 553(d)(3) of the Administrative Procedure Act. For the reasons described above, delaying the effectiveness of these regulations could undermine the purpose of this temporary rule, to maintain measures to reduce catch during the 2016 fishing year as a stop-gap measure while new management measures developed by the Council are implemented to ensure the long-term sustainable harvest of blueline tilefish.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review.

This temporary rule is exempt from the otherwise applicable requirement of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 13, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In 648.2, add a definition for “Blueline tilefish” in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Blueline tilefish means *Caulolatilus microps.*

* * * * *

■ 3. In § 648.4, add paragraph (a)(12)(ii) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(12) * * *

(ii) *Blueline tilefish vessels*—(A) *Commercial.* Any vessel of the United States must have been issued and have on board a valid Federal commercial tilefish permit to fish for, catch, possess, transport, land, sell, trade, or barter, any blueline tilefish in excess of the recreational possession limit as specified under § 648.298(c) from the EEZ portion of the area defined at § 648.298(a).

(B) *Party and charter vessel permits.* Any party or charter vessel must have been issued, under this part, a Federal charter/party tilefish vessel permit to fish for blueline tilefish in the EEZ portion of the area defined at § 648.298(a), if it carries passengers for hire. Any person onboard such a vessel must observe the recreational possession limit as specified at § 648.298(c) and the prohibition on sale in § 648.14(w)(1)(ii).

* * * * *

■ 4. In § 648.5, add paragraph (a)(1) and reserve paragraph (a)(2) to read as follows:

§ 648.5 Operator permits.

* * * * *

(a) * * *

(1) The operator permit provisions outlined in § 648.5(a) pertaining to operator permit requirements also apply to the operator of any vessel fishing for or possessing blueline tilefish harvested in or from the EEZ portion of the area defined at § 648.298(a).

(2) [Reserved]

■ 5. In § 648.14, add paragraph (w) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(w) *Blueline tilefish.* It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements*—(i) *Operator permit.* Operate a vessel with a tilefish permit to fish for or possess blueline tilefish in or from the EEZ portion of the area defined at § 648.298(a), unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Vessel permit.* Fish for, catch, possess, transport, land, sell, trade, or barter any blueline tilefish for a commercial purpose, other than solely for transport on land, unless the vessel has been issued a tilefish permit, or unless the blueline tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(2) *Possession and landing.* (i) Fish for, possess, retain, or land blueline tilefish, unless:

(A) The blueline tilefish are being fished for or were harvested in or from the EEZ portion of the area defined at

§ 648.298(a) by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The blueline tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in State waters.

(C) The blueline tilefish are being fished for or were harvested in or from the EEZ portion of the area defined at § 648.298(a) in accordance with the possession limits specified at § 648.298(b) or (c).

(ii) [Reserved]

(3) Fish for or possess blueline tilefish inside and outside of the EEZ portion of the area defined at § 648.298(a) on the same trip.

(4) *Transfer and purchase.* (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; blueline tilefish caught by a vessel without a tilefish permit, unless the blueline tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(ii) [Reserved]

(5) *Presumption.* For purposes of this part, the following presumption applies: All blueline tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the EEZ portion of the area defined at § 648.298(a), unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in State waters.

■ 6. Add § 648.298 to read as follows:

§ 648.298 Blueline tilefish management measures.

(a) *Management unit.* The regulations in this paragraph apply to vessels or operators of vessels fishing for blueline tilefish in the area of the Atlantic Ocean from the latitude of the VA and NC border (36°33′01.0″ N. Lat.), extending eastward from the shore to the outer boundary of the EEZ and northward to the United States-Canada border.

(b) *Commercial possession limit.* A vessel or operator of a vessel that has been issued a valid Federal commercial tilefish permit under this part may fish for, possess, and/or land up to 300 lb (136 kg) whole weight of blueline tilefish per trip from the area defined in this section.

(c) *Recreational possession limit.* Any person fishing on a vessel who is not fishing under a commercial tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to seven blueline tilefish per trip from the area defined in this section.

[FR Doc. 2016–14349 Filed 6–14–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 117
Friday, June 17, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR 52

[Document Number AMS–FV–15–0049, FV–16–332]

United States Standards for Grades of Canned Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise 18 U.S. grade standards for canned vegetables issued on or before August 3, 1998. AMS is proposing to replace the two-term grading system (dual nomenclature) with a single term to describe each quality level for the grade standards identified in this notice. Terms using the letter grade would be retained and the descriptive term would be eliminated. For example, grade standards using the term "U.S. Grade A" or "U.S. Fancy" would be revised to use the term "U.S. Grade A." Likewise, grade standards using the term "U.S. Grade B" or "U.S. Extra Standard" would be revised to use the single term "U.S. Grade B." These changes would bring the grade standards in line with the present quality levels being marketed today and provide guidance in the effective use of these products. Editorial changes would also be made to the grade standards that conform to recent changes made in other grade standards.

DATES: Comments must be submitted on or before August 16, 2016.

ADDRESSES: Written comments may be submitted via the Internet at *http://www.regulations.gov* or by mail to Dana N. White, Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709-South Building; STOP 0247, Washington, DC 20250; or fax (202) 690–1527. Copies of the proposed revised U.S. Standards for Grades are available at the Web site address cited above. All comments should reference the document number, date, and page number of this issue of the **Federal Register**. All comments will be posted without change, including any personal information provided. All comments submitted in response to this notice will be included in the public record and made available to the public on the Internet via *http://www.regulations.gov* and at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Contact Dana N. White, at the address above, by phone (202) 720–5870; fax (202) 690–1527; or email: *Dana.White@ams.usda.gov.* Copies of the current U.S. standards for grades for the 18 canned vegetables covered by this Notice are available on the Internet at *http://www.ams.usda.gov/grades-standards/vegetables.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices."

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The U.S. standards for grades of fruits and vegetables not connected with Federal Marketing Orders or U.S. import requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Specialty Crops Program and are available on the internet at: *http://www.ams.usda.gov/grades-standards/vegetables.* AMS is proposing revisions to these U.S. Standards for Grades using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background: AMS periodically reviews the grade standards for usefulness in serving the industry. AMS has determined that changes to 18 grade standards covering various canned vegetables are required. More recently developed grade standards use a single term, such as "U.S. Grade A" or "U.S. Grade B," to describe each level of quality within a grade standard. Older grade standards used dual nomenclature, such as "U.S. Grade A" and "U.S. Fancy," "U.S. Grade B" and "U.S. Extra Standard," and "U.S. Grade C" and "U.S. Standard," to describe the same level of quality. The terms "U.S. Fancy," "U.S. Extra Standard," and "U.S. Standard" would be removed and the terms "U.S. Grade A," U.S. Grade B," and "U.S. Grade C" would be used exclusively. AMS is also proposing editorial changes to these grade standards, *i.e.*, updating addresses to obtain copies of the grade standards, removing specific addresses for licensed suppliers of color standards and inspection aids, and updating Code of Federal Regulations references where applicable. Contact information for current licensed suppliers is available in the Fresh and Processed Equipment Catalog on the AMS Web site at: *http://www.ams.usda.gov/grades-standards/how-purchase-equipment-and-visual-aids.* These revisions will provide a format that is consistent with those of other grade standards (75 FR 43141). The following table summarizes the changes currently under consideration by AMS.

U.S. Standards for grades of canned	Effective date	Change level of quality designation to single term	Other revisions proposed
Asparagus	06/20/73	Yes	Update address for standards. Correct Standard of Identity citation.
Beets	08/03/98	Yes	Update address for standards.
Carrots	08/03/98	Yes	Update address for standards.

U.S. Standards for grades of canned	Effective date	Change level of quality designation to single term	Other revisions proposed
Chili Sauce	10/20/53	Yes	Update address for standards.
Corn, Cream Style	07/01/57	Yes	Update address for standards. Add Standard of Identity citation. Add Latin name.
Hominy	03/10/58	Yes	Update address for standards.
Leafy Greens	09/01/73	Yes	Update address for standards. Add titles to Tables IV and V. Correct Standard of Identity citation.
Okra	07/08/57	Yes	Update address for standards.
Okra and Tomatoes or Tomatoes and Okra	12/24/57	Yes	Update address for standards.
Onions	11/02/57	Yes	Update address for standards. Add titles for Tables II and III. Add Standard of Identity citation.
Peas and Carrots	07/20/70	Yes	Update address for standards.
Peas, Field and Black-eye Peas	07/01/57	Yes	Update address for standards. Replace "U.S. Grade D" with "Substandard."
Pimientos	10/23/67	Yes	Update address for standards.
Pumpkin (Squash)	07/01/57	Yes	Update address for standards.
Sauerkraut	05/13/63	Yes	Update address for standards.
Spinach	05/08/71	Yes	Update address for standards. Correct Standard of Identity citation.
Squash (Summer Type)	05/25/59	Yes	Update address for standards.
Succotash	05/24/67	Yes	Update address for standards. Replace "U.S. Grade D" with "Substandard." Put "proportion of ingredients" in outline form.

The proposed revisions to these grade standards would provide a common language for trade and better reflect the current marketing of fruits and vegetables.

A 60-day period is provided for interested persons to submit comments on the proposed grade standards. Copies of the proposed revised standards are available on the Internet at *http://www.regulations.gov.*

Authority: 7 U.S.C. 1621–1627.

Dated: June 13, 2016.

Dana Coale,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14332 Filed 6–16–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3629; Directorate Identifier 2015–NM–011–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Dassault Aviation Model MYSTERE-FALCON 50, MYSTERE-FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. The NPRM proposed to require modification of the anti-collision light bonding. The NPRM was prompted by a report of an in-flight lightning strike to the WHELEN anti-collision light located on the top of the vertical fin tip that caused severe damage and resulted in the loss of some airplane functions. This action revises the NPRM by clarifying the applicability. We are proposing this supplemental NPRM (SNPRM) to prevent loss of electrical power and essential airplane functions, and possible reduced control of the airplane. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by August 1, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3629; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2015–3629; Directorate Identifier 2015–NM–011–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model MYSTERE-FALCON 50, MYSTERE-FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on September 24, 2015 (80 FR 57545) ("the NPRM"). The NPRM was prompted by a report of an in-flight lightning strike to the WHELEN anti-collision light located on the top of the vertical fin tip that caused severe damage and induced the loss of some airplane functions. The NPRM proposed to require modification of the anti-collision light bonding.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have determined that we inadvertently referred to specific service information to identify affected airplanes in figure 1 to paragraph (c) of the proposed AD (in the NPRM). In order to clarify the applicability and identify the affected airplanes as specified in European Aviation Safety Agency (EASA) Airworthiness Directive 2015–0006, dated January 15, 2015, we have removed references to specific service information from the applicability of this proposed AD.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0006, dated January 15, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Dassault Aviation Model MYSTERE-FALCON 50, MYSTERE-FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. The MCAI states:

> An occurrence was reported where a Falcon 2000 aeroplane experienced an in-flight lightning strike, which caused severe damage and induced the loss of some aeroplane functions. The investigation results revealed that the entering point of the lightning was at the WHELEN anti-collision light located on the top of the vertical fin tip.
>
> When the lightning strike hit the anti-collision light, an electric arc occurred between the aeroplane structure and the anti-collision light and created a conductive path by which the lightning current entered inside the aeroplane. Further analysis has determined that the electrical bonding between the WHELEN anti-collision light, Part Number (P/N) 01–0790044–09, and the fin tip fairing or the No. 2 engine air intake cover is insufficient to withstand a lightning strike.
>
> In case of severe lightning, this condition, if not corrected, could lead to an unsafe condition (loss of electrical power and/or of essential functions) possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Dassault Aviation developed a modification (mod) to improve the WHELEN anti-collision light bonding when the anti-collision light is located on top of the vertical fin tip or on No. 2 engine air intake cover, and issued several Service Bulletins (SB) to modify all affected aeroplanes in service.
>
> For the reasons described above, this [EASA] AD requires modification of the anti-collision light bonding.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3629.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued the following service information.

- Dassault Service Bulletin F50–481, Revision 1 (also referred to as 481–R1), dated January 26, 2015.
- Dassault Service Bulletin F900–372, Revision 1 (also referred to as 372–R1), dated January 26, 2015.
- Dassault Service Bulletin F900–378, Revision 1 (also referred to as 378–R1), dated January 26, 2015.
- Dassault Service Bulletin F900EX–285, Revision 1 (also referred to as 285–R1), dated January 26, 2015.
- Dassault Service Bulletin F900EX–305, Revision 1 (also referred to as 305–R1), dated January 26, 2015.
- Dassault Service Bulletin F2000–337, Revision 1 (also referred to as 337–R1), dated January 26, 2015.
- Dassault Service Bulletin F2000EX–108, Revision 1 (also referred to as 108–R1), dated January 26, 2015.

The service information describes procedures for modifying the anti-collision light bonding. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We considered the comments received.

Request To Address the Original Grimes Anti-Collision Light Installation

An anonymous commenter stated that the NPRM should address the original Grimes anti-collision light installation. This commenter asserted that any aircraft with the original Grimes anti-collision light installation would still be vulnerable to inadequate bonding.

We acknowledge the commenter's request. However, we are not aware of an unsafe condition associated with the original Grimes anti-collision light installation. We have determined that an unsafe condition exists on WHELEN anti-collision light installations and must be addressed. If we determine that an unsafe condition exists in the Grimes anti-collision light installation, we might consider further rulemaking. We have not changed this SNPRM regarding this issue.

Request To Reference the Revised Service Information

NetJets Aviation requested that we revise the NPRM to refer to revised service information for the actions specified in paragraph (g) of the proposed AD (in the NPRM). NetJets Aviation stated that all service information identified in paragraphs (g)(1) through (g)(7) of the proposed AD (in the NPRM) have been revised.

We agree that this SNPRM should refer to the most current service information. We have changed paragraph (g) of this proposed AD to refer to the revised service information. We have also added a new paragraph (h) to this proposed AD to provide credit for actions done "before the effective date of this AD" using the originally referenced service information. We have redesignated subsequent paragraphs accordingly.

Additional Change Made to This SNPRM

We have retitled table 1 to paragraph (c) of the proposed AD (in the NPRM) to figure 1 to paragraph (c) of this proposed AD to meet the requirements of the Office of the Federal Register. This change is for formatting purposes only.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Costs of Compliance

We estimate that this SNPRM affects 778 airplanes of U.S. registry.

We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $801 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,416,738, or $1,821 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2015–3629; Directorate Identifier 2015–NM–011–AD.

(a) Comments Due Date

We must receive comments by August 1, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation airplanes, certificated in any category, identified in figure 1 to paragraph (c) of this AD.

FIGURE 1 TO PARAGRAPH (C) OF THIS AD—*Applicability*

Airplanes	Configuration	[1] Except airplanes modified through:	
		Dassault modification embodied in production	Service bulletin in service
Dassault Aviation Model MYSTERE-FALCON 50 airplanes.	M1853 is embodied in production or in service through Dassault Service Bulletin F50–241.	[2] M2083 or M3094	Dassault Service Bulletin F50-257.
Dassault Aviation Model MYSTERE-FALCON 900 airplanes.	[3] Group 1: M1682 is embodied in production or in service through Dassault Service Bulletin F900–182.	M5381	Not Applicable.
	[4] Group 2: M1682 is embodied in production or in service through Dassault Service Bulletin F900–182 and Modification M1947 is embodied in production or in service through Dassault Service Bulletin F900–176.	M5386	Not Applicable.
Dassault Aviation Model FALCON 900EX airplanes.	Group 1: M1682 is embodied in production or in service through Dassault Service Bulletin F900EX–025.	M5381	Not Applicable.
	Group 2: M1682 is embodied in production or in service through Dassault Service Bulletin F900EX–025 and Modification M1947 is embodied in production or in service through Dassault Service Bulletin F900EX–19.	M5103 or M5386	Not Applicable.

FIGURE 1 TO PARAGRAPH (C) OF THIS AD—*Applicability*—Continued

Airplanes	Configuration	[1] Except airplanes modified through:	
		Dassault modification embodied in production	Service bulletin in service
Dassault Aviation Model FALCON 2000 airplanes.	M331 is embodied in production or in service through Dassault Service Bulletin F2000–44.	M810 or M1061 or M2778	Dassault Service Bulletin F2000–111.
Dassault Aviation Model FALCON 2000EX airplanes.	M1802 is embodied in production.	M810 or M1061 or M2778	Not Applicable.

[1] The excluded airplanes, as specified in figure 1 to paragraph (c) of this AD—Applicability, embody either one modification in production or one service bulletin in service, as applicable.

[2] Modification M2083, Dassault Service Bulletin F50–257, Modification M1947, Dassault Service Bulletin F900–176, Dassault Service Bulletin F900EX–19, Modification M5103, as applicable, introduce fin tip SATCOM fairing, in production or in service.

[3] Group 1: Airplanes with WHELEN anti-collision light located on top of vertical fin tip.

[4] Group 2: Airplanes with WHELEN anti-collision light located on top of air intake engine No. 2.

(d) Subject

Air Transport Association (ATA) of America Code 33, Lights.

(e) Reason

This AD was prompted by a report of an in-flight lightning strike to the WHELEN anti-collision light located on the top of the vertical fin tip that caused severe damage and resulted in the loss of some airplane functions. We are issuing this AD to prevent loss of electrical power and essential airplane functions, and possible reduced control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modification

Within 24 months after the effective date of this AD, modify the anti-collision light bonding, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(7) of this AD.

(1) For Model MYSTERE-FALCON 50 airplanes: Dassault Service Bulletin F50–481, Revision 1 (also referred to as 481–R1), dated January 26, 2015.

(2) For Model MYSTERE-FALCON 900 airplanes with the WHELEN system installed on the fin tip: Dassault Service Bulletin F900–372, Revision 1 (also referred to as 372–R1), dated January 26, 2015.

(3) For Model MYSTERE-FALCON 900 airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900–378, Revision 1 (also referred to as 378–R1), dated January 26, 2015.

(4) For Model FALCON 900EX airplanes with the WHELEN system installed on the fin tip: Dassault Service Bulletin F900EX–285, Revision 1 (also referred to as 285–R1), dated January 26, 2015.

(5) For Model FALCON 900EX airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900EX–305, Revision 1 (also referred to as 305–R1), dated January 26, 2015.

(6) For Model FALCON 2000 airplanes: Dassault Service Bulletin F2000–337, Revision 1 (also referred to as 337–R1), dated January 26, 2015.

(7) For Model FALCON 2000EX airplanes: Dassault Service Bulletin F2000EX–108, Revision 1 (also referred to as 108–R1), dated January 26, 2015.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by the introductory text of paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (h)(1) through (h)(7) of this AD. This service information is not incorporated by reference in this AD.

(1) For Model MYSTERE–FALCON 50 airplanes: Dassault Service Bulletin F50–481, dated August 22, 2007.

(2) For Model MYSTERE–FALCON 900 airplanes with the WHELEN system installed on the fin tip: Dassault Service Bulletin F900–372, dated August 22, 2007.

(3) For Model MYSTERE–FALCON 900 airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900–378, dated September 19, 2007.

(4) For Model FALCON 900EX airplanes with the WHELEN system installed on the fin tip: Dassault Service Bulletin F900EX–285, dated July 18, 2007.

(5) For Model FALCON 900EX airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900EX–305, dated September 19, 2007.

(6) For Model FALCON 2000 airplanes: Dassault Service Bulletin F2000–337, dated July 25, 2007.

(7) For Model FALCON 2000EX airplanes: Dassault Service Bulletin F2000EX–108, dated July 25, 2007.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0006, dated January 15, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3629.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14290 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3753; Directorate Identifier 2015–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2016–04–12 that applies to certain Turbomeca S.A. Arriel 2B, 2B1, 2C, 2C1, 2C2, 2D, 2E, 2S1, and 2S2 turboshaft engines. AD 2016–04–12 requires spectrometric oil analysis (SOA) inspection of the engine accessory gearbox (AGB), and, depending on the results, removal of the engine AGB. Since we issued AD 2016–04–12, we determined that wear inspections of the engine AGB cover are also required. This proposed AD would require initial and repetitive inspections of the AGB, and wear inspections of the engine AGB cover. We are proposing this AD to prevent failure of the engine AGB, uncommanded in-flight shutdown (IFSD), damage to the engine, and damage to the helicopter.

DATES: We must receive comments on this proposed AD by August 16, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 0 5 59 74 40 00; fax: 33 0 5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3753; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this NPRM. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2015–3753; Directorate Identifier 2015–NE–26–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

On February 18, 2016, we issued AD 2016–04–12, Amendment 39–18406 (81 FR 12583, March 10, 2016), ("AD 2016–04–12") for certain Turbomeca S.A. Arriel 2B, 2B1, 2C, 2C1, 2C2, 2D, 2E, 2S1, and 2S2 turboshaft engines. AD 2016–04–12 requires an SOA inspection, and, depending on the results, removal of the engine AGB. AD 2016–04–12 resulted from a report of an uncommanded IFSD of an Arriel 2S2 engine caused by rupture of the 41-tooth gear, which forms part of the bevel gear in the engine AGB. We issued AD 2016–04–12 to prevent failure of the engine AGB, uncommanded IFSD, damage to the engine, and damage to the helicopter.

Actions Since AD 2016–04–12 Was Issued

Since we issued AD 2016–04–12, Turbomeca recommended that an engine AGB cover wear inspection be performed. Also, the European Aviation Safety Agency issued AD 2016–0055, dated March 17, 2016, which requires initial and repetitive SOA inspections of the AGB and initial and repetitive wear inspections of the engine AGB cover.

Related Service Information Under 1 CFR Part 51

Turbomeca S.A. has issued Mandatory Service Bulletin No. 292 72 2861, Version C, dated March 9, 2016. The service information describes procedures for performing periodic SOA and wear inspections of the engine AGB. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This NPRM would require initial and repetitive SOA, wear inspections of the engine AGB cover, and AGB replacement based on the results of the inspections.

Costs of Compliance

We estimate that this proposed AD affects 250 engines installed on helicopters of U.S. registry. We also estimate that it would take 0.5 hours per engine to perform the SOA and 1 hour to perform the engine AGB cover wear inspection. The average labor rate is $85 per hour. Required parts for inspection and analysis cost about $3,179 per engine. We estimate that 5 engines will require AGB replacement at a cost of $44,397 per engine. We also estimate that it would take about 2 hours to replace the engine AGB. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,049,460.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–04–12, Amendment 39–18406 (81 FR 12583, March 10, 2016) ("AD 2016–04–12"), and adding the following new AD:

Turbomeca S.A.: Docket No. FAA–2015–3753; Directorate Identifier 2015–NE–26–AD.

(a) Comments Due Date

We must receive comments by August 16, 2016.

(b) Affected ADs

This AD supersedes AD 2016–04–12.

(c) Applicability

This AD applies to Turbomeca S.A. Arriel 2B, 2B1, 2C, 2C1, 2C2, 2D, 2E, 2S1, and 2S2 turboshaft engines with an engine accessory gearbox (AGB), part number 0292120650, with a machined front casing.

(d) Unsafe Condition

This AD was prompted by a report of an uncommanded in-flight shutdown (IFSD) of an Arriel 2S2 engine caused by rupture of the 41-tooth gear, which forms part of the bevel gear in the engine AGB. We are issuing this AD to prevent failure of the engine AGB, uncommanded IFSD, damage to the engine, and damage to the helicopter.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Initial Spectrometric Oil Analysis (SOA) and Engine AGB Cover Wear Inspection

(i) Perform an SOA and an engine AGB cover wear inspection before the engine AGB, module M01, exceeds 850 engine hours (EH) since new or since last overhaul (SLO), or within 50 EH after April 14, 2016, or before the next flight after the effective date of this AD, whichever occurs later.

(ii) Reserved.

(2) Repetitive Inspection Intervals

(i) Repeat the SOA within every 100 EH since the last SOA.

(A) For all affected engines, if the last SOA was performed before the effective date of this AD, and the aluminum concentration level is 0.8 parts per million (p/m) or greater, perform a wear inspection of the engine AGB cover within 50 EHs since last SOA or before the next flight after the effective date of this AD, whichever occurs later.

(B) For all affected engines, if the last SOA was performed after the effective date of this AD, and the aluminum concentration level is 0.8 p/m or greater, perform a wear inspection of the engine AGB cover within 20 EH since the last SOA.

(ii) For Arriel 2E engines, repeat the engine AGB cover wear inspection within every 800 EH since last inspection (SLI) if the SOA indicated the aluminum concentration level is less than 0.8 p/m.

(iii) For all affected engines, except for Arriel 2E engines, repeat the engine AGB cover wear inspection within every 600 EH SLI if the SOA indicated the aluminum concentration level is less than 0.8 p/m.

(3) Inspection Criteria

(i) Use paragraph 2.4.2.1 and 2.4.2.2 of Turbomeca Mandatory Service Bulletin (MSB) No. 292 72 2861, Version C, dated March 9, 2016, to do the inspections required by paragraphs (e)(1) and (2) of this AD.

(ii) Reserved.

(4) Corrective Actions Based on the Results of the Most Recent Wear Inspection

(i) If the wear measured from the most recent wear inspection is 0.15 mm or less, no further action is required. However, you must still comply with the repetitive inspection requirements of paragraph (e)(2) of this AD.

(ii) If the most recent wear inspection was performed while the engine was in service, and the wear is greater than 0.15 mm, do the following:

(A) If the wear measured from the most recent wear inspection is greater than 0.15 mm, but 0.30 mm or less, remove the engine AGB from service within 200 EH SLI and replace with a part eligible for installation.

(B) If the wear measured from the most recent wear inspection is greater than 0.30 mm, but 0.40 mm or less, remove the engine AGB from service within 25 EH SLI and replace with a part eligible for installation.

(C) If the wear measured from the most recent wear inspection is greater than 0.40 mm, remove the engine AGB from service before further flight and replace with a part eligible for installation.

(iii) If the most recent wear inspection was performed on the engine during an engine shop visit, and the wear is greater than 0.15 mm, remove the engine AGB before further flight and replace with a part eligible for installation.

(f) Definition

For the purpose of this AD, an engine shop visit is defined as the induction of an engine into the shop for maintenance involving the separation of any major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov*.

(h) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0055, dated March 17, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–3753.

(3) Turbomeca S.A. MSB No. 292 72 2861, Version C, dated March 9, 2016, can be

obtained from Turbomeca S.A., using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 0 5 59 74 40 00; fax: 33 0 5 59 74 45 15.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on June 8, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–14228 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–7046; Airspace Docket No. 16–ANM–3]

Proposed Amendment of Class E Airspace, and Revocation of Class E Airspace; Miles City, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E surface airspace, remove Class E airspace designated as an extension to the Class E surface area, and modify Class E airspace extending upward from 700 feet above the surface at Frank Wiley Field Airport, Miles City, MT. The FAA found it necessary to account for the rising terrain for the safety and management of Standard Instrument Approach Procedures for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before August 1, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–7046; Airspace Docket No. 16–ANM–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Frank Wiley Field Airport, Miles City, MT.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–7046; Airspace Docket No. 16–ANM–3." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 to modify Class E surface airspace, remove Class E airspace designated as an extension to Class E surface area, and modify Class

E airspace extending upward from 700 feet above the surface at Frank Wiley Field Airport, Miles City, MT. The Class E surface airspace would be modified to a 5-mile radius of Frank Wiley Field Airport to support terminal operations below 700 feet above the surface and to account for rising terrain. Class E airspace designated as an extension to Class E surface area would be removed as there are no Instrument Flight Rules (IFR) procedures that require a surface extension. Class E airspace extending upward from 700 feet above the surface would be modified to an 8-mile radius of Frank Wiley Field Airport to support IFR departures below 1,200 feet above the surface due to rising terrain. After a review of the airspace, the FAA found modification of the airspace necessary for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6002, 6004, and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM MT E2 Miles City, MT [Modified]

Miles City, Frank Wiley Field, MT
(Lat. 46°25′41″ N., long. 105°53′10″ W.)

That airspace extending upward from the surface within a 5-mile radius of Frank Wiley Field.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM MT E4 Miles City, MT [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Miles City, MT [Modified]

Miles City, Frank Wiley Field, MT
(Lat. 46°25′41″ N., long. 105°53′10″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Frank Wiley Field and that airspace extending upward from 1,200 feet above the surface within a 34.5-mile radius of Frank Wiley Field.

Issued in Seattle, Washington, on June 7, 2016.

Byron Chew,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–14280 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR 57, 70, 72, and 75

[Docket No. MSHA–2014–0031]

RIN 1219–AB86

Exposure of Underground Miners to Diesel Exhaust

Correction

In proposed rule document 2016–13219 appearing on pages 36826–36831 in the issue of Wednesday, June 8, 2016, make the following correction:

1. On page 36826, in the third column, in the **DATES** section, "September 1, 2016" should read "September 6, 2016".

[FR Doc. C1–2016–13219 Filed 6–16–16; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0280; FRL–9947–80–Region 7]

Approval of Iowa's State Implementation Plan (SIP); Definition of Greenhouse Gas and Prevention of Significant Deterioration (PSD) Plantwide Applicability Limits (PALs) Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two SIP revisions submitted by the State of Iowa. First, EPA is proposing to approve the definition of greenhouse gas, which will make the state's definition consistent with the Federal definition, and add greenhouse gases to emission inventory requirements. Second, EPA is proposing to approve Iowa's revision to its Prevention of Significant Deterioration (PSD) program, specifically to the definition of "subject to regulation," and adopt by reference the most recent Federal plantwide applicability limitations (PALs) provisions.

DATES: Written comments must be received by July 18, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0280, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7039, or by email at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action to approve the definition of greenhouse gas, and add greenhouse gases to emission inventory requirements. We have published a direct final rule approving the State's SIP revision (s) in the "Rules and Regulations" section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: June 3, 2016.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016–14281 Filed 6–16–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0042; FRL–9947–84–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions and Amendments to Regulations for Continuous Opacity Monitoring, Continuous Emissions Monitoring, and Quality Assurance Requirements for Continuous Opacity Monitors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to revisions to Maryland regulations for continuous opacity monitoring (COM or COMs) and continuous emissions monitoring (CEM or CEMs) and to an amendment adding requirements for Quality Assurance and Quality Control (QA/QC) as they pertain to COMs. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 18, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0042 at *http://www.regulations.gov,* or via email to *fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 24, 2015, the State of Maryland through the Maryland Department of the Environment (MDE) submitted a revision to the Maryland SIP comprised of revisions and amendments to COMAR 26.01.01 *General Administrative Requirements* related to requirements for COMs and CEMs and the addition of new COMAR 26.01.31 *Quality Assurance Requirements for Continuous Opacity Monitors (COMs).* On February 26, 2016, MDE provided a supplemental letter indicating MDE was excluding portions of COMAR 26.11.01 submitted in the November 24, 2015 SIP submittal from EPA's review and consideration as a SIP revision. The February 26, 2016 letter from MDE is available in the docket for this rulemaking and is available online at *http://www.regulations.gov.*[1]

I. Background

On February 28, 1996 (61 FR 6418), EPA approved Maryland regulation COMAR 26.11.01.10 *Continuous Emissions Monitoring (CEM) Requirements* into the Maryland SIP. COMAR 26.11.01.10 required large fuel-burning equipment burning coal and residual oil to install COMs and demonstrate compliance using COM data. The regulation established monitoring requirements, CEM installation requirements, CEM installation and certification schedules, quality assurance procedures for opacity monitors, and recordkeeping and reporting requirements. The regulation incorporated by reference Maryland's Technical Memorandum 90–01 (TM 90), and required compliance determinations for the State's visible emissions limits and QA/QC for COMs in accordance with the procedures therein. The terms CEMs and COMs are used interchangeably in COMAR 26.11.01.10, therefore MDE determined it was necessary to establish separate requirements for each. The November 24, 2015 SIP submittal, as clarified and amended on February 26, 2016 by MDE, includes revisions to COMs and CEMs definitions in COMAR 26.11.01.01, a revised COMAR 26.11.01.10 for COMs, a new COMAR 26.11.01.11 for CEMs, and new COMAR 26.11.38 for QA/QC procedures related to COMs. TM 90, as incorporated in Maryland's SIP, establishes CEMs policies and procedures for enforcement actions, and sets forth levels of enforcement action responses based on a source's operating time during a calendar quarter. It also allows exceedances to occur up to 10 percent of a source's operating time in addition to an existing six minute per hour exclusion, and established specific enforcement actions based on a source's number of exceedances during the quarter and for repeated exceedances for consecutive calendar quarters. The November 24, 2015 submittal, as amended by MDE's February 26, 2016 letter, removes the requirement to use TM 90 for enforcement actions and for QA/QC requirements on applicable fuel-burning equipment and removes references to TM 90.

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[1] Specifically, in the February 26, 2016 letter from MDE to EPA, MDE withdrew from EPA's review and consideration the text in COMAR 26.11.01.10.A(4), in COMAR 26.11.01.10.B(4), in COMAR 26.11.01.10D(2)(c), and in COMAR 26.11.01.10.F which had initially been included in the November 25, 2015 SIP submittal.

II. Summary of SIP Revision

The revision is comprised of four State actions pertaining to adjusted requirements for COMs and CEMs in COMAR 26.11.01.01 and COMAR 26.11.01.10, new CEMs provisions in COMAR 26.11.01.11, and new QA/QC requirements in COMAR 26.11.31. These four actions are a series of regulatory actions that result in a recodification of some existing requirements for COMs and CEMs, establishment of separate regulations and requirements for COMs and CEMs, removal of applicability of TM 90 for certain fuel-burning equipment and removal of references to TM 90, and codification of the QA/QC requirements for COMs that were formerly incorporated by reference in TM 90. A summary of MDE's four regulatory actions are provided in this notice. Additional details regarding the four actions and EPA's analysis of the revised regulations are provided in EPA's Technical Support Document (TSD) dated April 5, 2016, and can be found in the docket for this proposed rulemaking action available online at *http://www.regulations.gov.*

First, on April 14, 2011, MDE adopted amendments to COMAR 26.11.01 *General Administrative Requirements.* To establish separate regulations for COMs and CEMs, the April 14, 2011 action clarified the definition for CEMs and added a definition of COMs at COMAR 26.11.01.01, repealed COMAR 26.11.01.10 in its entirety and replaced it with a new regulation for COMs (also at COMAR 26.11.01.10) entitled *Continuous Opacity Monitoring Requirements,* and added new COMAR 26.11.01.11 *Continuous Emissions Monitoring Requirements.* The April 14, 2011 action also made administrative changes to reporting and recordkeeping requirements in COMAR 26.11.01.

Revised regulation COMAR 26.11.01.10 establishes requirements for COMs and applies to fuel-burning equipment burning coal, fuel oil, tars, or waste combustible fluid at any time that has a rated heat input capacity of 250 million British thermal units (Btu) per hour or greater, fuel burning equipment burning coal with a rated heat input capacity of 100 million Btu per hour or greater but less than 250 million Btu per hour and was constructed on or before June 19, 1984, cement kilns, fluidized bed combustors of any size, and municipal waste combustors with a burning capacity greater than 35 tons per day. The regulation at COMAR 26.11.01.10 establishes general requirements for installation of COMs, certification and quality assurance procedures, and recordkeeping and reporting requirements. Maryland removed the requirements for COMs on fuel-burning equipment to meet TM 90 in this action but retained at that time the QA/QC requirements contained in Part II of TM 90.

New COMAR 26.01.11 requires CEMs for fuel-burning equipment burning coal that has a rated heat input capacity of 100 million Btu per hour or greater, municipal waste combustors with a burning capacity greater than 35 tons per day, fluidized bed combustors, kraft pulp mills, and any owner or operator that is required to install a CEM under any federal requirement. This new regulation establishes general requirements for the installation of CEMs for each of the applicable source categories, quality assurance provisions, and monitoring and compliance requirements, and retains the applicability of TM 90.

Second, on May 16, 2011, MDE adopted COMAR 26.11.31 *Quality Assurance Requirements for Continuous Opacity Monitors (COMs),* which codified the QA/QC procedures from TM 90 for COMs and incorporated by reference two federal performance and design specification requirements for the operation of opacity monitoring: Performance Specification 1 under 40 CFR part 60 Appendix B, and *Performance Audit Procedures for Opacity Monitors,* EPA 450/4–92–010 dated March 1992.

Third, on July 29, 2011, MDE adopted revisions to the provisions of COMAR 26.11.01.10 and 26.11.01.11 that were originally adopted on April 14, 2010. On July 29, 2011, MDE again revised COMAR 26.11.01.10 to correct the size of municipal waste combustors required to install continuous monitors (from greater than 35 mmBtu per hour to 35 mmBtu per hour or greater), to remove the requirement to meet TM 90 for QA/QC procedures and replace with a reference to the new QA/QC requirements in COMAR 26.11.31, and to clarify CEMs requirements regarding pollutants to be continuously measured for municipal waste combustors, Kraft pulp mills, and fluidized bed combustors. The action also added COMAR 26.11.01.10E for recordkeeping and reporting requirements for CEMs.

Finally, on July 29, 2011, MDE adopted further revisions to the provisions of COMAR 26.11.01.10 and COMAR 26.11.01.11 to remove remaining references to TM 90, and to clarify that the QA/QC procedures for COMs are now in COMAR 26.11.31. Further EPA analysis of the revisions to these Maryland regulations as well as the reasons supporting EPA's proposed approval of these revisions are provided in the TSD supporting this rulemaking which can be found in the docket for this proposed rulemaking action and is available online at *http://www.regulations.gov.*

III. Proposed Action

EPA's review of this material indicates that the November 24, 2015 submittal, as amended by MDE's February 26, 2016 letter, is in accordance with the CAA and is therefore approvable. Because TM 90 contains enforcement exemptions, its removal strengthens the Maryland SIP. EPA is proposing to approve the Maryland SIP revision submittal which contains revisions and amendments to provisions for COMs and CEMs in COMAR 26.11.01.01 and COMAR 26.11.01.10 and adds new provisions for COMs and CEMs at COMAR 26.11.01.11 and COMAR 26.11.31. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to the requirements for COMs and CEMs in Maryland regulation COMAR 26.01.01 and COMAR 26.01.31, discussed previously in section II of this rulemaking. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve revisions to Maryland regulation COMAR 26.01.01 and to approve the addition of COMAR 26.01.31 into the Maryland SIP does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 27, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–14394 Filed 6–16–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R09–OAR–2004–0091; FRL–9947–72–Region 9]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Ventura County Air Pollution Control District ("Ventura County APCD" or "District") is the designated COA. The intended effect of approving the OCS requirements for the Ventura County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed in this document are proposed to be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the OCS air regulations.

DATES: Comments must be received by July 18, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2004–0091 at *http://www.regulations.gov*, or via email to Andrew Steckel, Rulemaking Office Chief at *Steckel.Andrew@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information
  A. Why is the EPA taking this action?
II. The EPA's Evaluation
  A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?
  B. What requirements were submitted to update 40 CFR part 55?
III. Incorporation by Reference
IV. Administrative Requirements

I. Background Information

A. Why is the EPA taking this action?

On September 4, 1992, the EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under section 55.4; or (3) when a state or local agency submits a rule to the EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of requirements by the Ventura County APCD on January 8, 2016. Public comments received in writing within 30 days of publication of this document will be considered by the EPA before publishing a final rule. Section 328(a) of the Act requires that the EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits the EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents the EPA from making substantive changes to the requirements it incorporates. As a result, the EPA may be incorporating rules into part 55 that do not conform to all of the EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by the EPA for inclusion in the SIP.

II. The EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, the EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). The EPA has excluded administrative and procedural rules[2] that regulate toxics, which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What requirements were submitted to update 40 CFR part 55?

After review of the requirements submitted by the Ventura County APCD against the criteria set forth above and in 40 CFR part 55, the EPA is proposing to make the following Ventura County APCD requirements applicable to OCS sources. Earlier versions of these District rules are currently implemented on the OCS.

Rule No.	Name	Adoption or amended date
42	Permit Fees	04/14/15
74.15.1	Boilers, steam Generators, and Process Heaters	06/23/15
26.13	New Source Review-Prevention of Significant Deterioration (PSD)	11/10/15

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Ventura County APCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Administrative Requirements

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

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[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where the EPA has not delegated authority to implement and enforce part 55, the EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of the EPA Information Collection Request ("ICR") No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expired January 31, 2012. As the EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 3, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

■ 3. Appendix A to part 55 is amended by revising under the heading "California" paragraph (b)(8) to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 2	Definitions (Adopted 04/12/11).
Rule 5	Effective Date (Adopted 04/13/04).
Rule 6	Severability (Adopted 11/21/78).
Rule 7	Boundaries (Adopted 06/14/77).
Rule 10	Permits Required (Adopted 04/13/04).
Rule 11	Definition for Regulation II (Adopted 03/14/06).
Rule 12	Applications for Permits (Adopted 06/13/95).
Rule 13	Action on Applications for an Authority To Construct (Adopted 06/13/95).
Rule 14	Action on Applications for a Permit To Operate (Adopted 06/13/95).
Rule 15.1	Sampling and Testing Facilities (Adopted 10/12/93).
Rule 16	BACT Certification (Adopted 06/13/95).
Rule 19	Posting of Permits (Adopted 05/23/72).
Rule 20	Transfer of Permit (Adopted 05/23/72).
Rule 23	Exemptions From Permits (Adopted 04/12/11).

Rule 24	Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92).
Rule 26	New Source Review—General (Adopted 03/14/06).
Rule 26.1	New Source Review—Definitions (Adopted 11/14/06).
Rule 26.2	New Source Review—Requirements (Adopted 05/14/02).
Rule 26.3	New Source Review—Exemptions (Adopted 3/14/06).
Rule 26.6	New Source Review—Calculations (Adopted 3/14/06).
Rule 26.8	New Source Review—Permit To Operate (Adopted 10/22/91).
Rule 26.10	New Source Review—Prevention of Significant Deterioration (PSD)(Repealed 06/28/11).
Rule 26.11	New Source Review—ERC Evaluation at Time of Use (Adopted 05/14/02).
Rule 26.12	Federal Major Modifications (Adopted 06/27/06).
Rule 26.13	New Source Review—Prevention of Significant Deterioration (PSD) (Adopted 11/10/15).
Rule 28	Revocation of Permits (Adopted 07/18/72).
Rule 29	Conditions on Permits (Adopted 03/14/06).
Rule 30	Permit Renewal (Adopted 04/13/04).
Rule 32	Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 02/20/79).
Rule 33	Part 70 Permits—General (Adopted 04/12/11).
Rule 33.1	Part 70 Permits—Definitions (Adopted 04/12/11).
Rule 33.2	Part 70 Permits—Application Contents (Adopted 04/10/01).
Rule 33.3	Part 70 Permits—Permit Content (Adopted 09/12/06).
Rule 33.4	Part 70 Permits—Operational Flexibility (Adopted 04/10/01).
Rule 33.5	Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93).
Rule 33.6	Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93).
Rule 33.7	Part 70 Permits—Notification (Adopted 04/10/01).
Rule 33.8	Part 70 Permits—Reopening of Permits (Adopted 10/12/93).
Rule 33.9	Part 70 Permits—Compliance Provisions (Adopted 04/10/01).
Rule 33.10	Part 70 Permits—General Part 70 Permits (Adopted 10/12/93).
Rule 34	Acid Deposition Control (Adopted 03/14/95).
Rule 35	Elective Emission Limits (Adopted 04/12/11).
Rule 36	New Source Review—Hazardous Air Pollutants (Adopted 10/06/98).
Rule 42	Permit Fees (Adopted 04/14/15).
Rule 44	Exemption Evaluation Fee (Adopted 04/08/08).
Rule 45	Plan Fees (Adopted 06/19/90).
Rule 45.2	Asbestos Removal Fees (Adopted 08/04/92).
Rule 47	Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99).
Rule 50	Opacity (Adopted 04/13/04).
Rule 52	Particulate Matter—Concentration (Grain Loading) (Adopted 04/13/04).
Rule 53	Particulate Matter—Process Weight (Adopted 04/13/04).
Rule 54	Sulfur Compounds (Adopted 06/14/94).
Rule 56	Open Burning (Adopted 11/11/03).
Rule 57	Incinerators (Adopted 01/11/05).
Rule 57.1	Particulate Matter Emissions From Fuel Burning Equipment (Adopted 01/11/05).
Rule 62.7	Asbestos—Demolition and Renovation (Adopted 09/01/92).
Rule 63	Separation and Combination of Emissions (Adopted 11/21/78).
Rule 64	Sulfur Content of Fuels (Adopted 04/13/99).
Rule 67	Vacuum Producing Devices (Adopted 07/05/83).
Rule 68	Carbon Monoxide (Adopted 04/13/04).
Rule 71	Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94).
Rule 71.1	Crude Oil Production and Separation (Adopted 06/16/92).
Rule 71.2	Storage of Reactive Organic Compound Liquids (Adopted 09/26/89).
Rule 71.3	Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92).
Rule 71.4	Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93).
Rule 71.5	Glycol Dehydrators (Adopted 12/13/94).
Rule 72	New Source Performance Standards (NSPS)(Adopted 09/9/08).
Rule 73	National Emission Standards for Hazardous Air Pollutants (NESHAPS (Adopted 09/9/08).
Rule 74	Specific Source Standards (Adopted 07/06/76).
Rule 74.1	Abrasive Blasting (Adopted 11/12/91).
Rule 74.2	Architectural Coatings (Adopted 01/12/10).
Rule 74.6	Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04).
Rule 74.6.1	Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04).
Rule 74.7	Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95).
Rule 74.8	Refinery Vacuum Producing Systems, Waste-Water Separators and Process Turnarounds (Adopted 07/05/83).
Rule 74.9	Stationary Internal Combustion Engines (Adopted 11/08/05).
Rule 74.10	Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98).
Rule 74.11	Natural Gas-Fired Residential Water Heaters—Control of NO$_X$ (Adopted 05/11/10).
Rule 74.11.1	Large Water Heaters and Small Boilers (Adopted 09/14/99).
Rule 74.12	Surface Coating of Metal Parts and Products (Adopted 04/08/08).
Rule 74.15	Boilers, Steam Generators and Process Heaters (5MMBTUs and greater) (Adopted 11/08/94).
Rule 74.15.1	Boilers, Steam Generators and Process Heaters (1 to 5 MMBTUs) (Adopted 06/23/15).
Rule 74.16	Oil Field Drilling Operations (Adopted 01/08/91).
Rule 74.20	Adhesives and Sealants (Adopted 01/11/05).
Rule 74.23	Stationary Gas Turbines (Adopted 1/08/02).
Rule 74.24	Marine Coating Operations (Adopted 11/11/03).
Rule 74.24.1	Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02).

Rule 74.26	Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94).
Rule 74.27	Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94).
Rule 74.28	Asphalt Roofing Operations (Adopted 05/10/94).
Rule 74.30	Wood Products Coatings (Adopted 06/27/06).
Rule 75	Circumvention (Adopted 11/27/78).
Rule 101	Sampling and Testing Facilities (Adopted 05/23/72).
Rule 102	Source Tests (Adopted 04/13/04).
Rule 103	Continuous Monitoring Systems (Adopted 02/09/99).
Rule 154	Stage 1 Episode Actions (Adopted 09/17/91).
Rule 155	Stage 2 Episode Actions (Adopted 09/17/91).
Rule 156	Stage 3 Episode Actions (Adopted 09/17/91).
Rule 158	Source Abatement Plans (Adopted 09/17/91).
Rule 159	Traffic Abatement Procedures (Adopted 09/17/91).
Rule 220	General Conformity (Adopted 05/09/95).
Rule 230	Notice To Comply (Adopted 9/9/08).

* * * * *

[FR Doc. 2016–14279 Filed 6–16–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 15–180; DA 16–519]

Comment Sought on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: In this document, the Federal Communications Commission's Wireless Telecommunications Bureau (Bureau) seeks public comment on a proposed *Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* to address the review of deployments of small wireless antennas and associated equipment under Section 106 of the National Historic Preservation Act (NHPA).

DATES: Comments are due on or before June 27, 2016.

ADDRESSES: You may submit comments, identified by DA No. 16–519; WT Docket No. 15–180, by any of the following methods:

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper should file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers should submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - ○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - ○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stephen DelSordo, (202) 418–1986 or *stephen.delsordo@fcc.gov,* or Paul D'Ari, 202–418–1550 or *paul.dari@fcc.gov.* Media contact: Cecilia Sulhoff, (202) 418–0587 or *cecilia.sulhoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's document in, DA No. 16–519, WT Docket No. 15–180, released May 12, 2016. The full text of this document, including the associated attachments, is available for inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

By this document, the Wireless Telecommunications Bureau (Bureau) seeks public comment on the proposed *Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Amended Collocation Agreement) to address the review of deployments of small wireless antennas and associated equipment under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108 (formerly codified at 16 U.S.C. 470f)). The Bureau proposes to amend the current *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation Agreement) (47 CFR pt. 1, App. B) to account for the limited potential of small wireless antennas and associated equipment, including Distributed Antenna Systems (DAS) and small cell facilities, to affect historic properties. The Bureau also proposes minor amendments intended to clarify pre-existing provisions of the Collocation Agreement without modifying how those provisions will be administered going forward.

The Bureau proposes these amendments in order to enable swift and responsible deployment of wireless broadband services—including deployments that will support next generation "5G" wireless service offerings—while maintaining the vital role that States and Tribal Nations play in reviewing projects with potentially significant effects. As Federal Communications Commission ("Commission or FCC") Chairman Wheeler has observed, the evolution to 5G is a "hinge moment" in technological advancement. The Bureau's proposal is designed to leverage this moment and facilitate nationwide wireless broadband deployment while ensuring at the same time that the Commission's rules reflect the NHPA's values and obligations.

To fulfill its responsibilities under the NHPA, the Commission has incorporated the requirements of Section 106 of the NHPA into its environmental rules. Section 1.1307(a)(4) of the Commission's rules (47 CFR 1.1307(a)(4)) directs licensees and applicants to follow the procedures in the rules of the Advisory Council for Historic Preservation (ACHP), as modified by two programmatic agreements executed by the Commission with ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) (47 CFR pt. 1, Apps. B and C), in order to determine whether certain undertakings will affect historic properties. The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (NPA) generally addresses new tower construction, and the Collocation Agreement addresses historic preservation review for collocations on existing towers, buildings, and other non-tower structures. Under the Collocation Agreement, most antenna collocations on existing structures are excluded from Section 106 historic preservation review, with a few defined exceptions to address potentially problematic situations.

In the *Infrastructure Report and Order*, 80 FR 1238, Jan. 8, 2015, the Commission recognized that DAS networks and small cell facilities use components that are a fraction of the size of traditional cell tower deployments and can often be installed on utility poles, buildings, and other existing structures with limited or no potential to cause adverse effects on historic properties. Accordingly, the Commission eliminated some Section 106 reviews of proposed deployments of small wireless communications facilities by adopting two targeted exclusions from Section 106 review for certain small-facility collocations on utility structures and on buildings and other non-tower structures, provided that they meet certain specified criteria. The Commission also stated that there is room for additional improvement in this area, and determined that any more comprehensive measures would require additional consideration and consultation and would be more appropriately addressed and developed through the program alternative process. The Commission committed to work with ACHP and other interested parties to develop a program alternative to promote additional appropriate efficiencies in the historic preservation review of DAS and small-cell deployments.

This proposal to amend the Collocation Agreement modifies an existing program alternative established in accordance with Section 800.14 of ACHP's rules (36 CFR 800.14). The Collocation Agreement establishes procedures for its amendment, and ACHP's rules require that the Commissions arrange for public participation appropriate to the subject matter and the scope of the category of covered undertakings. On July 28, 2015, the Bureau formally commenced this proceeding by releasing the Public Notice and Section 106 Scoping Document (Comment Sought on Scoping Document Under Section 106 of the National Historic Preservation Act, 80 FR 51174, Aug. 8, 2015), inviting comment on amending the Collocation Agreement to facilitate the review process for deployments of small wireless communications facilities under Section 106 of the NHPA (54 U.S.C. 306108).

The Bureau developed its specific proposal for amending the Collocation Agreement after considering the comments filed in response to the Section 106 Scoping Document and additional information provided at meetings with industry representatives and other interested parties. The proposal has been informed by engagement with ACHP, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and Tribal Nations. In accordance with ACHP's requirements, this document seeks comment on the proposed Amended Collocation Agreement; the Bureau will also publish notice of the proposed Amended Collocation Agreement in the **Federal Register**, giving all interested parties an opportunity to comment on the record at the decisional stage.

After considering the comments received in response to this document, the Bureau expects to submit a proposed Amended Collocation Agreement to the other original signatories: ACHP and NCSHPO.

The proposed Amended Collocation Agreement would supplement the two targeted exclusions from Section 106 review and the NPA that the Commission adopted in the *Infrastructure Report and Order* for DAS and small cell deployments, as well as the exclusions set forth in the Collocation Agreement, as adopted in 2001. The proposed Amended Collocation Agreement would tailor the Section 106 process for DAS and small cell deployments by excluding deployments that have minimal potential for adverse effects on historic properties. Illustrative examples of small facility deployments may be viewed at ***https://www.fcc.gov/file/3813/download***.

Exclusion Relating to the Collocation of Small Wireless Antennas and Associated Equipment on Buildings and Non-Tower Structures Outside of Historic Districts. The current Collocation Agreement provides an exclusion for collocations, outside of historic districts, on buildings and non-tower structures that are not over 45 years of age. The proposed amendment to the Collocation Agreement would add new Stipulation VI, which establishes an exclusion for small wireless antennas and associated equipment mounted on buildings or non-tower structures or in the interior of buildings that are over 45 years of age if they are not historic properties and are outside of historic districts. Under the terms of the proposed exclusion, a small wireless antenna may be mounted on an existing building or non-tower structure or in the interior of a building regardless of the building's or structure's age without review under the Section 106 process set forth in the NPA unless: (1) The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district; (2) the building or structure is either a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places; or (3) the licensee or owner of the building or structure has received notification that the Commission has received a complaint from a member of the public, a Tribal Nation, a SHPO, or ACHP that the collocation has an adverse effect on one or more historic properties. This amendment establishes volumetric limits for antennas and other wireless equipment associated with the structure that are eligible for the exclusion, and restrictions on ground disturbance, with an exemption for up to four lightning grounding rods not exceeding a specified size per project. The volume of any deployed equipment that is not visible from public spaces at the ground level from 250 feet or less may be omitted from the calculation of volumetric limits cited in this Stipulation.

Exclusion Relating to Minimally Visible Deployments of Small Wireless Antennas and Associated Equipment on Structures in Historic Districts or on Historic Properties. The proposed Amended Collocation Agreement would also add a new Stipulation VII.A to provide an exclusion from review for a small wireless antenna and associated equipment mounted on a building or non-tower structure (or in the interior of a building) that is a historic property or inside or within 250 feet of the boundary of a historic district, subject to visibility limits. Under these limits, that antenna or antenna enclosure must be the only equipment that is visible from the ground level or from public spaces within the building (if the antenna is mounted in the interior of a building), that antenna or enclosure must not exceed 3 cubic feet in volume, and the antenna must be installed using stealth techniques that match or complement the structure on which or within which it is deployed. Under this exclusion, no other antenna on the building or non-tower structure may be visible from the ground level or from public spaces within the building (for an antenna mounted in the interior of a building). The amendment includes provisions restricting the visibility of an antenna's associated equipment, and requires that the facilities be installed in a way that does not damage historic materials and that permits the removal of such facilities without damaging historic materials. The amendment also includes limits on the extent of ground disturbance associated with the collocation, and on the number and size of lightning grounding rods that may be installed.

Exclusion Relating to Visible Small Wireless Antennas and Associated Equipment Deployments on Historic Properties or in Historic Districts. The proposed amendments to the Collocation Agreement would add new Stipulations VII.B, VII.C, and VII.D, providing narrow exclusions from the Section 106 process set forth in the NPA for visible small wireless antennas and associated equipment in historic districts under limited circumstances. New Section VII.B would provide an exclusion for a small wireless antenna including associated equipment mounted on a utility structure (including utility poles or electric transmission towers, but not including traffic lights, light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) that is in active use by a utility company and either is a historic property, is located on a historic property, or is located inside or within 250 feet of the boundary of a historic district. This proposed amendment provides that: (1) The antenna, excluding the associated equipment, must fit in an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet for more than one antenna/antenna enclosure; (2) the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, but excluding cable runs for the connection of power and other services, may be no more than 21 cubic feet in volume; and (3) the extent of ground disturbance associated with the deployment, and the number and size of lightning grounding rods that may be installed, is limited.

Proposed Stipulation VII.C specifies that the foregoing proposed exclusion for utility poles in historic districts would not apply to collocations on a traffic control structure (*i.e.*, traffic light) or on a light pole, lamp post, or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district. However, this section also provides that such proposed collocations may be excluded from such review on a case-by-case basis, if: (1) The collocation meets specified volumetric and ground disturbance limits; and (2) the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing element to the historic district. The amendment sets forth a process under which such collocations may qualify for the exclusion, which includes providing the SHPO with an opportunity to concur with the applicant's determination that the structure is not a contributing element.

The newly proposed Stipulation VII.D excludes from routine Section 106 review a small wireless communications facility located on a building or non-tower structure or in the interior of a building that is a historic property or is inside or within 250 feet of the boundary of a historic district, regardless of visibility, provided that the facility is an in-kind replacement for an existing facility, and it does not exceed the greater of the size of the existing antenna/antenna enclosure and associated equipment, or volumetric limits specified in the amendment. The replacement of the facilities (including antenna(s) and associated equipment as defined in the Amended Collocation Agreement) must not damage historic materials and must permit removal of such facilities without damaging historic materials. In addition, the extent of ground disturbance associated with the deployment, and the number and size of lightning grounding rods that may be installed, is limited.

Newly proposed Stipulation VII.E provides that a small antenna mounted inside a building or non-tower structure and subject to the provisions of Stipulation VII must be installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials.

Paperwork Reduction Act of 1995

This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

There are a number of other proposed minor amendments to the Collocation Agreement. These include revisions to the preamble that: (1) Define our policy goals in amending the Collocation Agreement; (2) define "Antenna"; (3) update the Agreement to refer to the NPA; and (4) clarify the definition of "Collocation." Other proposed amendments are intended to clarify and simplify the Collocation Agreement, without changing the way the exclusions have worked in practice. Thus, the amended Agreement: (1) Updates the cite to the NHPA; (2) clarifies the terms of the exclusions under Stipulations III and IV by simplifying the criteria that make towers ineligible for the exclusions and making clear that complaints from Tribal Nations (as well as SHPOs, ACHP, and the public) may make a tower ineligible; and (3) provides a process for the public to notify the FCC regarding any concerns with the application of the Collocation Agreement to specific undertakings (similar to the existing process under the NPA).

This proceeding continues to be treated as exempt under the Commission's ex parte rules. Accordingly, parties do not need to submit ex parte filings for communications concerning the development of the amendments to the Collocation Agreement. See 80 FR at 51175.

Comments may be filed using the Commission's Electronic Comment

Filing System ("ECFS"). All filings should refer to WT Docket No 15–180. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. *See* the **ADDRESSES** section.

Availability of Documents: Comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. *http://fjallfoss.fcc.gov/ecfs2/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Accessibility information: To request information in accessible formats (computer diskettes large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530(voice), (202) 418–0432(TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at *www.fcc.gov.*

List of Subjects in 47 CFR Part 1

Broadband, Communications, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Sue McNeil,

Chief of Staff, Wireless Telecommunications Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Revise Appendix B to part 1 as follows:

Appendix B to Part 1—Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas Executed by The Federal Communications Commission, The National Conference of State Historic Preservation Officers and The Advisory Council on Historic Preservation

WHEREAS, the Federal Communications Commission (FCC) establishes rules and procedures for the licensing of wireless communications facilities in the United States and its Possessions and Territories; and,

WHEREAS, the FCC has largely deregulated the review of applications for the construction of individual wireless communications facilities and, under this framework, applicants are required to prepare an Environmental Assessment (EA) in cases where the applicant determines that the proposed facility falls within one of certain environmental categories described in the FCC's rules (47 CFR 1.1307), including situations which may affect historical sites listed or eligible for listing in the NationalRegister of Historic Places ("National Register"); and,

WHEREAS, Section 106 of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) ("the Act") requires federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

WHEREAS, Section 800.14(b) of the Council's regulations, "Protection of Historic Properties" (36 CFR 800.14(b)), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

WHEREAS, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects affecting historic properties; and,

WHEREAS, the FCC, the Council, and the Working Group developed this Collocation Programmatic Agreement in accordance with 36 CFR Section 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas (collocation being defined in Stipulation I.B below); and,

WHEREAS, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and,

WHEREAS, the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse, and that in the cases where an adverse effect might occur, the procedures provided and referred to herein are proper and sufficient, consistent with Section 106, to assure that the FCC will take such effects into account; and,

WHEREAS, the FCC, the Council, and the National Conference of State Historic Preservation Officers (NCSHPO) executed this Nationwide Collocation Programmatic Agreement on March 16, 2001 to streamline the Section 106 review of collocation proposals and reduce the need for the construction of new towers, thereby reducing potential effects on historic properties that would otherwise result from the construction of those unnecessary new towers; and,

WHEREAS, since collocations reduce both the need for new tower construction and the potential for adverse effects on historic properties, the parties hereto agree that the terms of this Agreement should be interpreted and implemented wherever possible in ways that encourage collocation; and,

WHEREAS, the Middle Class Tax Relief and Job Creation Act of 2012 (Title VI—Public Safety Communications and Electromagnetic Spectrum Auctions, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156 (2012)) was adopted with the goal of advancing wireless broadband services, and the amended provisions in this Agreement further that goal; and,

WHEREAS, advances in wireless technologies since 2001 have produced systems that use smaller antennas and compact radio equipment, including those used in Distributed Antenna Systems (DAS) and small cell systems, which are a fraction of the size of traditional cell tower deployments and can be installed on utility poles, buildings, and other existing structures as collocations; and,

WHEREAS, the parties to this Collocation Agreement have taken into account new technologies involving use of small antennas that may often be collocated on utility poles, buildings, and other existing structures and increase the likelihood that such collocations will have minimal and not adverse effects on historic properties, and rapid deployment of such infrastructure may help meet the surging demand for wireless services, expand broadband access, support innovation and wireless opportunity, and enhance public safety—all to the benefit of consumers and the communities in which they live; and,

WHEREAS, the FCC, the Council, and NCSHPO have agreed that these new measures should be incorporated into this programmatic agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

WHEREAS, the FCC, the Council, and NCSHPO have crafted these new measures with the goal of promoting technological neutrality, with the goal of obviating the need for further amendments in the future as technologies evolve; and,

WHEREAS, notwithstanding the intent to draft provisions in a manner that obviates the need for future amendments, in light of the public benefits associated with rapid deployment of the facilities required to provide broadband wireless services, the FCC, the Council, and NCSHPO have agreed that changes in technology and other factors relating to the placement and operation of wireless antennas and associated equipment may necessitate further amendments to this Collocation Agreement in the future; and,

WHEREAS, the FCC, the Council, and NCSHPO have agreed that with respect to the amendments involving the use of small antennas, such amendments affect only the FCC's review process under Section 106 of the NHPA, and would not limit State and local governments' authority to enforce their own historic preservation requirements consistent with Section 332(c)(7) of the Communications Act and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012; and,

WHEREAS, the parties hereto agree that the procedures described in this Agreement are, with regard to collocations as defined herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR part 800; and,

WHEREAS, the FCC has consulted with NCSHPO and requested the President of NCSHPO to sign this Nationwide Collocation Programmatic Agreement in accordance with 36 CFR Section 800.14(b)(2)(iii); and,

WHEREAS, the FCC sought comment from Indian tribes and Native Hawaiian Organizations regarding the terms of this Nationwide Programmatic Agreement by letters of January 11, 2001, February 8, 2001, April 17, 2015, July 28, 2015, and May 12, 2016, and through dialogue at intertribal conferences and during conference calls; and,

WHEREAS, the terms of this Programmatic Agreement do not apply on "tribal lands" as defined under Section 800.16(x) of the Council's regulations, 36 CFR 800.16(x) ("Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities."); and,

WHEREAS, the terms of this Programmatic Agreement do not preclude Indian tribes or Native Hawaiian Organizations from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations; and,

WHEREAS, the execution and implementation of this Nationwide Collocation Programmatic Agreement will not preclude members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Programmatic Agreement.

NOW THEREFORE, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the collocation of antennas as follows.

Stipulations

The FCC, in coordination with licensees, tower companies, applicants for antenna licenses, and others deemed appropriate by the FCC, will ensure that the following measures are carried out.

I. Definitions

For purposes of this Nationwide Programmatic Agreement, the following definitions apply.

A. "Antenna" means an apparatus designed for the purpose of emitting radio frequency ("RF") radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For purposes of this Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the FCC's rules.

B. "Collocation" means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

C. "NPA" is the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (47 CFR part 1, App. C).

D. "Tower" is any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.

E. "Substantial increase in the size of the tower" means:

(1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

II. Applicability

A. This Nationwide Collocation Programmatic Agreement applies only to the collocation of antennas as defined in Stipulations I.A and I.B, above.

B. This Nationwide Collocation Programmatic Agreement does not cover any Section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas.

III. Collocation of Antennas on Towers Constructed on or Before March 16, 2001

A. An antenna may be mounted on an existing tower constructed on or before March 16, 2001 without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The mounting of the antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.E, above; or

2. The tower has been determined by the FCC to have an adverse effect on one or more historic properties, where such effect has not been avoided or mitigated through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or a finding of compliance with Section 106 and the NPA; or

3. The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

IV. Collocation of Antennas on Towers Constructed After March 16, 2001

A. An antenna may be mounted on an existing tower constructed after March 16, 2001 without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The Section 106 review process for the existing tower set forth in 36 CFR part 800 (including any applicable program alternative approved by the Council pursuant to 36 CFR 800.14) and any associated environmental reviews required by the FCC have not been completed; or

2. The mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.E, above; or

3. The tower as built or proposed has been determined by the FCC to have an adverse effect on one or more historic properties, where such effect has not been avoided or mitigated through a conditional no adverse effect determination, a Memorandum of Agreement, a Programmatic Agreement, or otherwise in compliance with Section 106 and the NPA; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

V. Collocation of Antennas on Buildings and Non-Tower Structures Outside of Historic Districts

A. An antenna may be mounted on a building or non-tower structure without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The building or structure is over 45 years old, and the collocation does not meet

the criteria established in Stipulation VI herein for collocations of small antennas;[1] or

2. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or

3. The building or non-tower structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places,[2] and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or

4. The collocation licensee or the owner of the building or non-tower structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation V has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and the NPA for this particular collocation.

VI. Collocation of Small Wireless Antennas and Associated Equipment on Buildings and Non-Tower Structures Outside of Historic Districts

A. A small wireless antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on an existing building or non-tower structure or in the interior of a building regardless of the building's or structure's age without such collocation being reviewed through the Section 106 process set forth in the NPA unless:

1. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district; or

2. The building or non-tower structure is either a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places; or

3. The collocation licensee or the owner of the building or non-tower structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register; or

4. The antennas and associated equipment exceed the volume limits specified below:

a. Each individual antenna, excluding the associated equipment (as defined in the definition of Antenna in Stipulation I.A.), that is part of the collocation must fit within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is individually no more than three cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, must in aggregate fit within enclosures (or if the antennas are exposed, within imaginary enclosures, *i.e.*, ones that would be the correct size to contain the equipment) that total no more than six cubic feet in volume; and,

b. All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, but excluding cable runs for the connection of power and other services, may not cumulatively exceed:

i. 28 cubic feet for collocations on all non-pole structures (including but not limited to buildings and water tanks) that can support fewer than 3 providers;

ii. 21 cubic feet for collocations on all pole structures (including but not limited to light poles, traffic signal poles, and utility poles) that can support fewer than 3 providers;

iii. 35 cubic feet for non-pole collocations that can support at least 3 providers; and,

iv. 28 cubic feet for pole collocations that can support at least 3 providers; or,

5. The depth and width of any proposed ground disturbance associated with the collocation exceeds the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project regardless of the extent of previous ground disturbance.

B. The volume of any deployed equipment that is not visible from public spaces at the ground level from 250 feet or less may be omitted from the calculation of volumetric limits cited in this Section.

VII. Collocation of Small or Minimally Visible Wireless Antennas and Associated Equipment in Historic Districts or on Historic Properties

A. A small antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on a building or non-tower structure or in the interior of a building that is (1) a historic property (including a property listed in or eligible for listing in the National Register of Historic Places) or (2) inside or within 250 feet of the boundary of a historic district without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The antenna or antenna enclosure (including any existing antenna), excluding associated equipment, is the only equipment that is visible from the ground level, or from public spaces within the building (if the antenna is mounted in the interior of a building), and provided that the following conditions are met:

a. No other antennas on the building or non-tower structure are visible from the ground level, or from public spaces within the building (for an antenna mounted in the interior of a building);

b. The antenna that is part of the collocation fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume; and,

c. The antenna is installed using stealth techniques that match or complement the structure on which or within which it is deployed;

2. The antenna's associated equipment is not visible from:

a. The ground level anywhere in a historic district (if the antenna is located inside or within 250 feet of the boundary of a historic district); or,

b. Immediately adjacent streets or public spaces at ground level (if the antenna is on a historic property that is not in a historic district); or,

c. Public spaces within the building (if the antenna is mounted in the interior of a building.

3. The facilities (including antenna(s) and associated equipment identified in the definition of Antenna in Stipulation I.A.) are installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials; and,

4. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

B. A small antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on a utility structure (including utility poles or electric transmission towers, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) that is in active use by a utility company (as defined in Section 224 of the Communications Act) and is either: (1) A historic property (including a property listed in or eligible for listing in the National Register of Historic Places); (2) located on a historic property (including a property listed in or eligible for listing in the National Register of Historic Places); or (3) located inside or within 250 feet of the boundary of a historic district, without being reviewed through the Section 106 process set forth in the NPA, provided that:

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[1] Stipulation VI in this Agreement applies to the collocation of small wireless antennas and associated equipment on buildings and non-tower structures outside of historic districts regardless of the building's or structure's age. Suitable methods for determining the age of a building or structure include, but are not limited to: (1) Obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards for Historian or for Architectural Historian (36 CFR part 61); or (2) consulting public records.

[2] The NPA provides that in order to determine whether a property is listed in or eligible for being listed in the National Register, the Applicants are required to review records that are available at the offices of the SHPO/THPO or through publicly available sources identified by the SHPO/THPO. NPA, Stipulation VI.D.1.A.

1. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure;

2. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume; and,

3. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

C. Proposals to mount a small antenna on a traffic control structure (*i.e.*, traffic light) or on a light pole, lamp post or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district, are generally subject to review through the Section 106 process set forth in the NPA. These proposed collocations will be excluded from such review on a case-by-case basis, if the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing element to the historic district, under the following procedures:

1. The applicant must request in writing that the SHPO concur with the applicant's determination that the structure is not a contributing element to the historic district.

2. The applicant's written request must specify the traffic control structure, light pole, or lamp post on which the applicant proposes to collocate and explain why the structure is not a contributing element based on the age and type of structure, as well as other relevant factors.

3. The SHPO has thirty days from its receipt of such written notice to inform the applicant whether it disagrees with the applicant's determination that the structure is not a contributing element to the historic district.

4. If within the thirty-day period, the SHPO informs the applicant that the structure is a contributing element or that the applicant has not provided sufficient information for a determination, the applicant may not deploy its facilities on that structure without completing the Section 106 review process.

5. If, within the thirty day period, the SHPO either informs the applicant that the structure is not a contributing element, or the SHPO fails to respond to the applicant within the thirty-day period, the applicant has no further Section 106 review obligations, provided that the collocation meets the following requirements:

a. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure;

b. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume; and,

c. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

D. An existing small antenna that is mounted on a building or non-tower structure or in the interior of a building that is (1) a historic property (including a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or (2) inside or within 250 feet of the boundary of a historic district, regardless of visibility, may be replaced without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The facility is a replacement for an existing facility, and it does not exceed the greater of:

a. The size of the existing antenna/antenna enclosure and associated equipment that is being replaced; or,

b. The following limits for the antenna and its associated equipment:

i. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure; and,

ii. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume; and,

2. The replacement of the facilities (including antenna(s) and associated equipment as defined in Stipulation I.A.) does not damage historic materials and permits removal of such facilities without damaging historic materials; and,

3. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

E. A small antenna mounted inside a building or non-tower structure and subject to the provisions of this Stipulation VII is to be installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials.

VIII. Reservation of Rights

Neither execution of this Agreement, nor implementation of or compliance with any term herein shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) or its implementing regulations contained in 36 CFR part 800.

IX. Monitoring

A. FCC licensees shall retain records of the placement of all licensed antennas, including collocations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC and the relevant SHPO any written objections it receives from members of the public regarding a collocation activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower owner.

C. Any member of the public may notify the FCC of concerns it has regarding the application of this Programmatic Agreement within a State or with regard to the review of individual undertakings covered or excluded under the terms of this Agreement. Comments shall be directed to the FCC's Federal Preservation Officer. The FCC will consider public comments and, following consultation with the SHPO, potentially affected Tribes, or the Council, as appropriate, take appropriate actions. The FCC shall notify the objector of the outcome of its actions.

X. Amendments

If any signatory to this Nationwide Collocation Programmatic Agreement believes that this Agreement should be amended, that signatory may at any time propose amendments, whereupon the signatories will consult to consider the amendments. This agreement may be amended only upon the written concurrence of the signatories.

XI. Termination

A. If the FCC determines that it cannot implement the terms of this Nationwide Collocation Programmatic Agreement, or if the FCC, NCSHPO or the Council determines that the Programmatic Agreement is not being properly implemented by the parties to this Programmatic Agreement, the FCC, NCSHPO or the Council may propose to the other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall notify the other signatories in writing, explaining the reasons for the proposed termination and the particulars of the asserted improper implementation. Such party also shall afford the other signatories a reasonable period of time of no less than thirty (30) days to consult and remedy the problems resulting in improper implementation. Upon receipt of such notice, the parties shall consult with each other and notify and consult with other entities that either are involved in such implementation or would be substantially affected by termination of this Agreement, and seek alternatives to termination. Should the consultation fail to produce within the original remedy period or any extension a reasonable alternative to termination, a resolution of the stated problems, or convincing evidence of substantial implementation of this Agreement in accordance with its terms, this Programmatic Agreement shall be terminated thirty days after notice of termination is served on all parties and published in the **Federal Register**.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower owner and management companies of the termination and of the need to comply with any applicable Section 106 requirements on a case-by-case basis for collocation activities.

XII. Annual Meeting of the Signatories

The signatories to this Nationwide Collocation Programmatic Agreement will meet annually on or about the anniversary of the effective date of the NPA to discuss the effectiveness of this Agreement and the NPA, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

XIII. Duration of the Programmatic Agreement

This Programmatic Agreement for collocation shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, constitutes evidence that the FCC has afforded the Council an opportunity to comment on the collocation as described herein of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these collocations on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR part 800.

Federal Communications Commission

Date:

Advisory Council on Historic Preservation

Date:

National Conference of State Historic Preservation Officers

Date:

[FR Doc. 2016–13835 Filed 6–16–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2015–0172; FF09M21200–1657–FXMB1231099BPP0]

RIN 1018–BB24

Migratory Bird Subsistence Harvest in Alaska; Use of Inedible Bird Parts in Authentic Alaska Native Handicrafts for Sale

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is proposing changes to the permanent subsistence migratory bird harvest regulations in Alaska. These regulations would enable Alaska Natives to sell authentic native articles of handicraft or clothing that contain inedible byproducts from migratory birds that were taken for food during the Alaska migratory bird subsistence harvest season. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

DATES: We will accept comments received or postmarked on or before August 16, 2016. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 1, 2016. Comments on the information collection aspects of this proposed rule must be received on or before July 18, 2016.

ADDRESSES: *Comments on the Proposed Rule.* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2015–0172.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R7–MB–2015–0172; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Place, MS: BPHC, Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comment Procedures section, below, for more information).

Comments on the Information Collection Aspects of the Proposed Rule: You may review the Information Collection Request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB. Send comments (identified by 1018–BB24) specific to the information collection aspects of this proposed rule to both the:

- Desk Officer for the Department of the Interior at OMB–OIRA at (202) 295–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email); and
- Service Information Collection Clearance Officer; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the Web site. When you submit a comment, the system receives it immediately.

However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov.*

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov.* Search for FWS–R7–MB–2015–0172, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird Management, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1714.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

We propose changes to the permanent migratory bird subsistence harvest regulations in Alaska. This proposal was developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 8–9, 2015, to develop recommendations for changes that would take effect starting during the 2016 harvest season. Changes were recommended for the permanent regulations in subpart A of 50 CFR part 92 to allow sale of handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. These recommended changes were presented first to the Pacific Flyway Council and then to the Service Regulations Committee (SRC) for approval at the committee's meeting on July 31, 2015.

This Proposed Rule

The regulations at title 50 of the Code of Federal Regulations (CFR) at section 92.6 (50 CFR 92.6) currently state, "You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their egg(s) taken under [the migratory bird subsistence harvest in Alaska regulations at 50 CFR part 92]." This rulemaking proposes regulations that would enable Alaska Natives to sell authentic native articles of handicraft or clothing that contain inedible byproducts from migratory birds that were taken for food during the Alaska migratory bird subsistence harvest season.

Specifically, in § 92.4, we propose to add definitions for "Authentic Native article of handicraft or clothing," "Migratory birds authorized for use in handicrafts or clothing," and "Sales by consignment." We propose to add these definitions to explain the terms we use in our proposed changes to § 92.6, which are explained below.

Also under subpart A, we propose to add a provision to § 92.6 to allow sale of handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. A request was made by Alaska Native artisans in Kodiak to use the inedible parts, primarily feathers, from birds taken for food during the subsistence hunt, and incorporate them into handicrafts for sale. New proposed regulations were developed in a process involving a committee comprised of Alaska Native representatives from Yukon-Kuskokwim Delta, Bering Straits, North Slope, Kodiak, Bristol Bay, Gulf of Alaska, Aleutian-Pribilof Islands, and Northwest Arctic; representatives from the Alaska Department of Fish and Game; and Service personnel. The biggest challenge was developing a list of migratory birds that could be used in handicrafts. This required cross-referencing restricted species listed in the various international migratory bird treaties. Recognizing that the Japan Treaty was the most restrictive, the committee compiled a list of 27 species of migratory birds from which inedible parts could be used in handicrafts for sale. The proposed regulations would allow the limited sale by Alaska Natives of handicrafts made using migratory bird parts, including consignment sales. Requiring the artist's tribal certification or Silver Hand insignia would limit counterfeiting of handicrafts.

Who would be eligible to sell handicrafts containing migratory bird parts under these regulations?

Under Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States, only Alaska Natives would be eligible to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Protocol also dictates that sales would be under a strictly limited situation. Eligibility would be shown by a Tribal Enrollment Card, Bureau of Indian Affairs card, or membership in the Silver Hand program. The State of Alaska Silver Hand program helps Alaska Native artists promote their work in the marketplace and enables consumers to identify and purchase authentic Alaska Native art. The insignia indicates that the artwork on which it appears is created by hand in Alaska by an individual Alaska Native artist. Only original contemporary and traditional Alaska Native artwork, not reproductions or manufactured work, may be identified and marketed with the Silver Hand insignia. To be eligible for a 2-year Silver Hand permit, an Alaska Native artist must be a full time resident of Alaska, be at least 18 years old, and provide documentation of membership in a federally recognized Alaska Native tribe. The Silver Hand insignia may only be attached to original work that is produced in the State of Alaska.

How will the service ensure that this proposal would not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

Under this proposal, Alaska Natives would be permitted to only sell authentic native articles of handicraft or clothing that contain an inedible byproduct of migratory birds that were taken for food during the Alaska migratory bird subsistence harvest season. Harvest and possession of these migratory birds must be conducted using nonwasteful taking.

Under this proposal, handicrafts may contain inedible byproducts from only bird species listed at § 92.6(b)(1) that were taken for food during the Alaska migratory bird subsistence harvest season. This list of 27 migratory bird species came from cross-referencing restricted (from sale) species listed in the Treaties with Russia, Canada, Mexico, and Japan with those allowed to be taken in the subsistence harvest. The migratory bird treaty with Japan was the most restrictive and thus dictated the subsistence harvest species from which inedible parts could be used in handicrafts for sale. In addition, all sales and transportation of sold items would be restricted to within the United States (including territories), until an import/export permit system can be established.

We have monitored subsistence harvest for over 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive harvest surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered.

Spectacled and Steller's Eiders

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to all forms of subsistence harvest and thus would not be authorized to have their inedible parts used to make handicrafts for sale.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to "review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" and to "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *" We conducted an intra-agency consultation with the Service's Fairbanks Fish and Wildlife Field Office on this proposed action as it would be managed in accordance with this proposed rule and the conservation measures. The consultation was completed with a Letter of Concurrence on a not likely to adversely affect determination for spectacled and Steller's eiders on handicraft sales dated December 29, 2015.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States provides a legal basis for Alaska Natives to be able sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Protocol also dictates that sales would be under a strictly limited situation pursuant to a regulation by a competent authority in cooperation with management bodies. The Protocol does not authorize the taking of migratory birds for commercial purposes.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rulemaking on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would impact Alaska Natives selling authentic native articles of handicraft or clothing such as headdresses, native masks, and earrings. We estimate that the majority of Alaska natives selling authentic native articles of handicraft or clothing would be small businesses. Alaska Native small businesses within the manufacturing industry, such as Pottery, Ceramics, and Plumbing Fixture Manufacturing (NAICS 327110 small businesses have <750 employees), Leather and Hide Tanning and Finishing (NAICS 316110), Jewelry and Silverware Manufacturing (NAICS 339910 small businesses have <500 employees), and all other Miscellaneous Wood Product Manufacturing (NAICS 321999 small businesses have <500 employees), may benefit from some increased revenues generated by additional sales. We expect that additional sales or revenue would be generated by Alaska Native small businesses embellishing or adding feathers to some of the existing handicrafts, which may slightly increase profit. The number of small businesses potentially impacted can be estimated by using data from the Alaska State Council of the Arts, which reviews Silver Hand permits. Currently, there are about 1,800 Silver Hand permit holders, of which less than 1 percent sell more than 100 items annually, and they represent a small number of businesses within the manufacturing industry. Due to the small number of small businesses impacted and the small increase in overall revenue anticipated from this proposed rule, it is unlikely that a substantial number of small entities would have more than a small economic effect (benefit).

Therefore, we certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. An initial/final regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Would not have an annual effect on the economy of $100 million or more. It would legalize and regulate a traditional subsistence activity. Alaska Native tribes would have a small economic benefit through being allowed to incorporate inedible bird parts into their authentic handicrafts or handmade clothing and to sell the products. However, the birds must have been harvested for food as part of the existing subsistence hunt, and only a limited list of 27 species could be used. The intent is to allow limited benefits from salvage of the inedible parts, not to provide an incentive for increasing the harvest. It should not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that would be regulated under this proposed rule are inedible parts of migratory birds taken for food under the subsistence harvest, and incorporated into handicrafts. Most, if not all, businesses that would sell the authentic Alaska Native handicrafts would qualify as small businesses. We have no reason to believe that this proposed rule would lead to a disproportionate distribution of benefits.
2. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does deal with the sale of authentic Alaska Native handicrafts, but should not have any impact on prices for consumers.
3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule does not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this proposed rule would not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game also incurs expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule is not specific to particular land ownership, but applies to the use of the inedible parts of 27 migratory bird species in authentic Alaska Native handicrafts. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this proposed rule on the State of Alaska under *Unfunded Mandates Reform Act,* above. We worked with the State of Alaska to develop these proposed regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), "Consultation and Coordination with Indian Tribal Governments," and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), we will send letters to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Pub. L. 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452; as amended by Pub. L. 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we will be sending letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on this handicraft sales proposed rule.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: Seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains a collection of information that we have submitted to the Office of Management and Budget (OMB) for review and approval under the PRA (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved our collection of information associated with:

- Voluntary annual household surveys that we use to determine levels of subsistence take (OMB Control Number 1018–0124).
- Permits associated with subsistence hunting (OMB Control Number 1018–0075).

This proposed rule requires that a certification (FWS Form 3–XXXX) or a Silver Hand insignia accompany each Alaska Native article of handicraft or clothing that contains inedible migratory bird parts. It also requires that all consignees, sellers, and purchasers retain this documentation with each item and produce it upon the request of a Law Enforcement Officer. We have reviewed FWS Form 3–XXXX and determined that it is a simple certification, which is not subject to the PRA. We are requesting that OMB approve the recordkeeping requirement to retain the certification or Silver Hand insignia with each item and the requirement that artists and sellers/consignees provide the documentation to buyers.

Title: Alaska Native Handicrafts, 50 CFR 92.6.

OMB Control Number: 1018–XXXX.

Service Form Number(s): None.

Type of Request: Request for a new OMB control number.

Description of Respondents: Individuals and businesses.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Ongoing.

Estimated Number of Respondents: 8,749 (7,749 buyers and 1,000 artists, sellers, and consignees).

Estimated Number of Annual Responses: 18,081.

Estimated Completion Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,507 hours.

Estimated Total Nonhour Burden Cost: None.

Because this is a new program, it is impossible to precisely estimate the number of artwork pieces including feathers of migratory birds that will be commercialized per year. To estimate burden associated with this information collection, we based estimates for the number of responses and completion time per response on following information and related reasonable assumptions. We calculated the number of responses based on an estimate of the number of art pieces produced per year. The number of art pieces produced per year was based on the following information provided by the Alaska State Council on the Arts. The Silver Hand Program currently has 205 registered participants. Along the 40 years of existence of the program, a total of 1,800 participants have been registered. Registrations are valid for a 3-year period, after which participants need to renew their permit. Silver Hand insignia or tags can only be attached to an original article of authentic Alaska Native art that has been made entirely by the artist and within the State of Alaska. Silver Hand participants are eligible for 100 tags per year. Participants may request additional tags if needed. Among Silver Hand participants, less than 1 percent has requested additional tags (information provided by the Alaska State Council on the Arts (*https://education.alaska.gov/aksca/native.html*, in February 2016)). We assumed that:

1. Each of 205 Silver Hand participants uses 70 tags per year (about 6 art pieces per month per artist, or 14,350 pieces per year Alaska-wide). For purposes of this collection, we assumed that artists who do not participate in the Silver Hand program produce the same number of pieces per year, for a total of 28,700 pieces Alaska-wide.
2. One third of all pieces produced include migratory bird feathers (9,567 pieces including feathers per year Alaska-wide).
3. Ten percent of all pieces including migratory bird feathers were eventually not commercialized (8,610 pieces commercialized per year). Ten percent of commercialized pieces were not sold (7,749 pieces sold).
4. Two-thirds of all pieces were sold directly by artists to buyers. This implies that one third of all pieces were sold by sellers or consignees (2,583);
5. Respondents (consignees, sellers, and buyers) spend 5 minutes to handle and archive each piece's documentation.

Requirement	Estimated number of responses	Completion time per response (minutes)	Estimated number of annual burden hours
Third Party Disclosure. Artists—provide certification/Silver Hand tag for each item. Sellers/Consignees—provide documentation to buyers	10,332	5	861
Buyers—retain documentation	7,749	5	646
Totals	18,081	....	1,507

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

1. Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
2. The accuracy of our estimate of the burden for this collection of information;
3. Ways to enhance the quality, utility, and clarity of the information to be collected; and
4. Ways to minimize the burden of the collection of information on respondents.

If you wish to comment on the information collection requirements of this proposed rule, send your comments directly to OMB (see detailed instructions under the heading *Comments on the Information Collection Aspects of the Proposed Rule* in **ADDRESSES**). Please identify your comments with 1018–BB24. Provide a copy of your comments to the Service Information Collection Clearance Officer (see detailed instructions under the heading *Comments on the Information Collection Aspects of the Proposed Rule* in **ADDRESSES**).

National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)

These proposed regulations are examined in a February 2016 environmental assessment, "Migratory Bird Subsistence Harvest in Alaska: Allow Use of Inedible Bird Parts in Authentic Alaska Native Handicrafts for Sale," dated February 18, 2016. Copies are available from the person listed under **FOR FURTHER INFORMATION**

CONTACT or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order. Further, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a Statement of Energy Effects is not required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

■ 2. Amend § 92.4 by adding, in alphabetical order, definitions for "*Authentic Native article of handicraft or clothing*", "*Migratory birds authorized for use in handicrafts or clothing*", and "*Sale by consignment*" to read as follows:

§ 92.4 Definitions.

* * * * *

Authentic Native article of handicraft or clothing means any item created by an Alaska Native to which inedible parts of migratory birds authorized for use in handicrafts or clothing are incorporated and which is fashioned by hand, or with limited use of machines, provided no mass production occurs.

* * * * *

Migratory birds authorized for use in handicrafts or clothing means the species of birds listed at 50 CFR 92.6(b) which were taken for food in a nonwasteful manner during the Alaska subsistence harvest season by an eligible person of an included area.

* * * * *

Sale by consignment means that an Alaska Native sends or supplies an authentic Native article of handicraft or clothing to a person (Alaska Native or non-Alaska Native) who sells the item for the Alaska Native. The Alaska Native retains ownership of the item and will receive money for the item when it is sold.

* * * * *

■ 3. Revise § 92.6 to read as follows:

§ 92.6 Use and possession of migratory birds.

You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part, except as provided in this section.

(a) *Giving and receiving migratory birds.* Under this part, you may take migratory birds for human consumption only. Harvest and possession of migratory birds must be conducted using nonwasteful taking. Edible meat of migratory birds may be given to immediate family members by eligible persons. Inedible byproducts of migratory birds taken for food may be used for other purposes, except that taxidermy is prohibited, and these byproducts may only be given to other eligible persons or Alaska Natives.

(b) *Authentic native articles of handicraft or clothing.* (1) Under this section, authentic native articles of handicraft or clothing may be produced for sale only from the following bird species:

(i) Tundra swan (*Cygnus columbianus*).

(ii) Blue-winged teal (*Anas discors*).

(iii) Redhead (*Aythya americana*).

(iv) Ring-necked duck (*Aythya collaris*).

(v) Greater scaup (*Aythya marila*).

(vi) Lesser scaup (*Aythya affinis*).

(vii) King eider (*Somateria spectabilis*).

(viii) Common eider (*Somateria mollissima*).

(ix) Surf scoter (*Melanitta perspicillata*).

(x) White-winged scoter (*Melanitta fusca*).

(xi) Barrow's goldeneye (*Bucephala islandica*).

(xii) Hooded merganser (*Lophodytes cucullatus*).

(xiii) Pacific loon (*Gavia pacifica*).

(xiv) Common loon (*Gavia immer*).

(xv) Double-crested cormorant (*Phalacrocorax auritus*).

(xvi) Black oystercatcher (*Haematopus bachmani*).

(xvii) Lesser yellowlegs (*Tringa flavipes*).

(xviii) Semipalmated sandpiper (*Calidris semipalmatus*).

(xix) Western sandpiper (*Calidris mauri*).

(xx) Wilson's snipe (*Gallinago delicata*).

(xxi) Bonaparte's gull (*Larus philadelphia*).

(xxii) Mew gull (*Larus canus*).

(xxiii) Red-legged kittiwake (*Rissa brevirostris*).

(xxiv) Arctic tern (*Sterna paradisaea*).

(xxv) Black guillemot (*Cepphus grylle*).

(xxvi) Cassin's auklet (*Ptychoramphus aleuticus*).

(xxvii) Great horned owl (*Bubo virginianus*).

(2) Only Alaska Natives may sell or re-sell any authentic native article of handicraft or clothing that contains an inedible byproduct of a bird listed in paragraph (b)(1) of this section that was taken for food during the Alaska migratory bird subsistence harvest season. Eligibility under this subsection can be shown by a Tribal Enrollment Card, Bureau of Indian Affairs card, or membership in the Silver Hand program. All sales and transportation of sold items are restricted to within the United States. Each sold item must be accompanied by either a certification (FWS Form 3–XXXX) signed by the artist or a Silver Hand insignia. Purchasers must retain this documentation and produce it upon the request of a law enforcement officer.

(3) Sales by consignment are allowed. Each consigned item must be accompanied by either a certification (FWS Form 3–XXXX) signed by the artist or Silver Hand insignia. All consignees, sellers, and purchasers must retain this documentation with each item and produce it upon the request of a law enforcement officer. All consignment sales are restricted to within the United States.

(4) The Office of Management and Budget reviewed and approved the information collection requirements contained in this part and assigned OMB Control No. 1018–XXXX. We use the information to monitor and enforce the regulations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed at 50 CFR 2.1(b).

Dated: May 16, 2016.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–14411 Filed 6–16–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 117
Friday, June 17, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Delta-Bienville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Delta-Bienville Resource Advisory Committee (RAC) will meet in Forest, Mississippi. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *https://fsplacesfsfed.us/fsjiles/unit/wo/secure_rural_schoolsnsf/RAC/ADA00765529071A58825754A0055730D?OpenDocument.*

DATES: The meeting will be held at 6:00 p.m. on July 11, 2016.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi. Interested parties may also attend via teleconference by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**; or via video teleconference at the Delta Ranger District, 68 Frontage Road, Rolling Fork, Mississippi.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bienville Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Michael Esters, Designated Federal Officer, by phone at 601–469–3811 or via email *atmesters@fsfed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 28, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Michael T. Esters, Designated Federal Officer, Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi 39074; by email to *mesters@fsfed.us* or via facsimile to 601–469–2513.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 13, 2016.

Michael T. Esters,

Designated Federal Officer.

[FR Doc. 2016–14366 Filed 6–16–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Generic Clearance for Non-Timber Forest Products

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, *Non-timber Forest Products.*

DATES: Comments must be received in writing on or before August 16, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Lynne Westphal, USDA, Forest Service, Northern Research Station, 1033 University Place, Suite 360, Evanston, IL 60201.

Comments also may be submitted via facsimile to 847–866–9506 or by email to: *lwestphal@fs.fed.us.* Please clearly state that your comments are in reference to the proposed Generic Clearance for Non-timber Forest Products. Comments submitted in response to this notice may be made available to the public through relevant Web sites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at USDA, Forest Service, Northern Research Station, 1033 University Place, Suite 360, Evanston, IL 60201 during normal business hours. Visitors are encouraged to call ahead to 847–866–9311 to facilitate entry to the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to *lwestphal@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynne Westphal, USDA, Forest Service, Northern Research Station, 847–866–9311 x11. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Non-Timber Forest Products.

OMB Number: 0596—NEW.

Type of Request: New.

Abstract: Non-timber forest products (NTFPs) are plants, mushrooms, and plant- or tree-derived goods like nuts, boughs, sap, and leaves that are harvested for use as food, medicine, and other purposes. Previous research suggests that approximately 20% of the U.S. population collects non-timber forest products for social, cultural, and/or economic reasons. Some non-timber forest product gathering is formal (planned, systematic) while much of it is informal (unplanned, opportunistic, and/or incidental to other outdoor recreation activities). For some people, harvested wild plants and mushrooms make up a substantial or nutritionally important part of their diet. In other cases, non-timber forest products are locally or regionally important products for businesses.

Many opportunities exist to design and manage forests and other natural areas to enhance the supply of non-timber forest products and increase the benefits they provide to society, and to maintain populations of, or adapt to loss of, important non-timber forest products in the face of changes like invasive species and climate impacts. Potential benefits include improved public health outcomes from outdoor activity including decreased obesity, diabetes, stress, and depression. Harvesting and consuming non-timber forest products also may help reduce the risk of malnutrition for individuals living in areas with limited access to fresh, affordable food. Designing and managing for non-timber forest products may have particular value in achieving environmental justice, as harvesting wild plants and mushrooms appears to be especially important for recent immigrants, American Indians, and Alaska Natives. However, managing forests and other natural areas to provide non-timber forest products in a sustainable way requires detailed, scientifically-based information that is not currently available. For example, it is important to avoid overharvesting any species and to minimize people's exposure to soil- and plant-based contaminants.

Many laws and policies specifically direct the USDA Forest Service (Forest Service) to consider and manage for non-timber forest products for the benefit of the American public. The Multiple-Use Sustained-Yield Act of 1960 requires the Forest Service to manage National Forests "under principles of multiple use and to produce a sustained yield of products and services." The Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 requires the Secretary of Agriculture to "maintain a comprehensive inventory of renewable resources and evaluate opportunities to improve their yield of goods and services." The 2012 Planning Rule specifically requires "consideration of habitat conditions for wildlife, fish, and plants commonly enjoyed and used by the public for hunting, fishing, trapping, *gathering,* observing, and *subsistence*" on national forests [italics added]. The Forest Service's 2010 National Report on Sustainable Forests affirms the agency's "all-lands" approach to managing the nation's natural resources, including forests that are not part of the National Forest system by providing useful information and management guidelines for potential adoption by nonfederal forest owners; gathering of non-timber forest products is addressed many times in this report. The United States is a signatory to the Montreal Process and is required to report every 5 years on a range of criteria and indicators for sustainable use of temperate and boreal forests. Several of the indicators address non-timber forest products, including one on subsistence uses of U.S. forests, but the only systematic data currently available on subsistence practices in the United States are for Alaska.

The Forest Service must also meet trust responsibilities to American Indians and Alaskan Natives on federal and tribal lands. This includes upholding treaties with American Indian tribes, the Federal Trust responsibility to tribes, and the Native American Religious Freedom Act. Non-timber forest products make up a significant amount of the natural resources that tribes depend on for traditional cultural uses related to health, economic and food security, and native customs and practices. Much of the historical and ethnographic information about the uses of non-timber forest products by American Indians and Alaskan Natives may not reflect contemporary uses and issues. Gaining new information can help us understand how uses of non-timber forest products have changed over time in response to management, socio-cultural circumstances, the economic conditions of tribes, and environmental forces of change.

Taking all of this into account, it is clear that Forest Service and other public and private land managers need general and place-specific information about non-timber forest products and non-timber forest product harvesting practices—and this information is not currently available. Therefore, to ensure that the Forest Service can meet its statutory and regulatory responsibilities and is able to inform management of forests and other natural areas to provide non-timber forest products in a sustainable way, the Forest Service seeks to obtain OMB approval to collect information from people who harvest non-timber forest products and from people who manage, make policies for or otherwise have a stake in the management of lands where non-timber forest products are harvested or may be harvested.

Affected Public: Individuals and Households, Businesses and Non-Profit Organizations, and/or State, Local or Tribal Government.

Estimate of Burden per Response: 30–90 minutes.

Estimated Annual Number of Respondents: 2,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,000–3,000 hours.

Comment is invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Forest Service, including whether the information will have practical or scientific utility; (2) the accuracy of the Forest Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 9, 2016.

Carlos Rodriguez-Franco,

Acting Deputy Chief for Research and Development.

[FR Doc. 2016–14316 Filed 6–16–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[5/11/2016 through 6/10/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Servant's Heart Christian Gifts, Inc.	2285 County Home Road, Greenville, NC 27858.	6/7/2016	The firm produces and assembles a variety of inspirational gifts, including baby apparel.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: June 10, 2016.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–14368 Filed 6–16–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–7–2016]

Authorization of Production Activity, Foreign-Trade Zone 134, Volkswagen Group of America Chattanooga Operations, LLC (Passenger Motor Vehicles), Chattanooga, Tennessee

On February 10, 2016, the Chattanooga Chamber Foundation, grantee of FTZ 134, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Volkswagen Group of America Chattanooga Operations, LLC, within FTZ 134, in Chattanooga, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 8682, February 22, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 9, 2016.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2016–14299 Filed 6–16–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–41–2016]

Foreign-Trade Zone 249—Pensacola, Florida, Notification of Proposed Production Activity, GE Renewables North America, LLC, Subzone 249A, (Wind Turbine Nacelles, Blades and Hubs), Pensacola, Florida

GE Renewables North America, LLC (GE Renewables) (formerly, GE Generators (Pensacola), L.L.C.), operator of Subzone 249A, submitted a notification of proposed production activity to the FTZ Board, for its facility located in Pensacola, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 23, 2016.

GE Renewables already has authority to produce wind turbines and related blades, hubs and nacelles within Subzone 249A. The current request would add foreign-status components to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt GE Renewables from customs duty payments on the foreign status components used in export production. On its domestic sales, GE Renewables would be able to choose the duty rates during customs entry procedures that apply to wind turbines and related blades, hubs and nacelles (duty free or 2.5%) for the foreign-status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components sourced from abroad include: Blade root spacers; pitch transformers; brake calipers; brake hydraulic power units; elastomeric generator mounts; labyrinth rings; sonic wind sensors; upwind covers; and, vibration monitors (duty rate ranges from free to 4.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 27, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: June 10, 2016.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2016–14318 Filed 6–16–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904, Request for Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Request for Panel Review.

SUMMARY: A Request for Panel Review was filed on behalf of Selenis Canada, Inc. with the United States Section of the North American Free Trade Agreement (NAFTA) Secretariat on June 6, 2016 pursuant to NAFTA Article 1904. Panel Review was requested of the International Trade Commission's final determination regarding Polyethylene Terephthalate Resin from Canada. The final injury determination was published in the **Federal Register** on May 4, 2016 (81 FRN 26832) and the effective antidumping order was published in the **Federal Register** on May 6, 2016 (81 FRN 27929). The NAFTA Secretariat has assigned case number USA–CDA–2016–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the NAFTA established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms to the antidumping or countervailing duty law of the country that made the determination.

Under NAFTA Article 1904, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686) and subsequently amended on April 10, 2008 (73 FR 19458).

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 6, 2016);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 21, 2016); and

(c) The panel review shall be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: June 13, 2016.

Paul E. Morri,s

United States Secretary, NAFTA Secretariat.

[FR Doc. 2016–14339 Filed 6–16–16; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–869]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review; 2013–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products from Japan.[1] The period of review (POR) is November 19, 2013, through April 30, 2015. The review covers one producer/exporter of the subject merchandise, Toyo Kohan Co., Ltd. (Toyo Kohan). We preliminarily determine that sales of subject merchandise by Toyo Kohan were not made at less than normal value during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective June 17, 2016.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The diffusion-annealed, nickel-plated flat-rolled steel products included in this order are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.,* "diffusion-annealed"); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this order, "nickel-based alloys" include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this order are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. The foregoing HTSUS subheadings are provided only for convenience and customs purposes. The written description of the scope of this order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the memorandum from Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan; 2013–2015" (Preliminary Decision Memorandum), which is issued concurrent with and hereby adopted by this notice.

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 37588 (July 1, 2015).

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that, for the period November 19, 2013, through April 30, 2015, the following dumping margin exists:

Manufacturer/exporter	Weighted-average margin (percent)
Toyo Kohan Co., Ltd	0.00

Disclosure and Public Comment

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[2] Interested parties may submit case briefs to the Department in response to these preliminary results no later than 30 days after the publication of these preliminary results.[3] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[4]

Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[5] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS.[6] In order to be properly filed, ACCESS must successfully receive an electronically-filed document in its entirety by 5 p.m. Eastern Time. Case and rebuttal briefs must be served on interested parties.[7]

Within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs.[8] Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.[9] Written argument and hearing requests should be electronically submitted to the Department via ACCESS.[10] The Department's electronic records system, ACCESS, must successfully receive an electronically-filed document in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[11] Parties will be notified of the time and location of the hearing.

The Department intends to publish the final results of this administrative review, including the results of its analysis of issues addressed in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended.[12]

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[13] If Toyo Kohan's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If Toyo Kohan's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* "{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed." [14] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

For entries of subject merchandise during the POR produced by Toyo Kohan for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for intermediate company(ies) involved in the transaction. The all-others rate is 45.42 percent.[15] We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Toyo Kohan will be that established in the final results of this administrative review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the less-than-fair value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 45.42 percent, which is the all-others rate established in the investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

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[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(c)(1)(ii).

[4] *See* 19 CFR 351.309(d)(1) and (2).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

[6] *See generally* 19 CFR 351.303.

[7] *See* 19 CFR 351.303(f).

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310(d)(1).

[10] *See generally* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

[13] *See* 19 CFR 351.212(b)(1).

[14] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[15] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Antidumping Duty Order,* 79 FR 30816, 30817 (May 29, 2014) (*Order*).

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: June 6, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Comparisons to Normal Value
   A. Determination of Comparison Method
   B. Results of the Differential Pricing Analysis
5. Product Comparisons
6. Date of Sale
7. Export Price
8. Normal Value
   A. Home Market Viability as Comparison Market
   B. Level of Trade
   C. Sales to Affiliated Customers
   D. Cost of Production
   1. Calculation of Cost of Production
   2. Test of Comparison Market Sales Prices
   3. Results of the Cost of Production Test
   E. Calculation of Normal Value Based on Comparison Market Prices
   F. Price-to-CV Comparison
   G. Constructed Value
9. Currency Conversion
10. Recommendation

[FR Doc. 2016–14070 Filed 6–16–16; 8:45 am]

BILLING CODE 3510–DS–P

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[16] *See Order,* 79 FR at 30817.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–048, C–580–888]

Countervailing Duty Investigations of Certain Carbon and Alloy Steel Cut-to-Length Plate From the People's Republic of China and the Republic of Korea: Postponement of Preliminary Determinations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 17, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Palmer at (202) 482–9068 (the People's Republic of China) or John Corrigan at (202) 482–7438 (Republic of Korea), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 2015, the Department of Commerce (the Department) initiated countervailing duty (CVD) investigations of imports of certain carbon and alloy steel cut-to-length plate (CTL plate) from Brazil, the People's Republic of China (PRC), and the Republic of Korea (Korea).[1] The notice of initiation stated that, in accordance with section 703(b)(l) of the Act and 19 CFR 351.205(b)(1), we would issue our preliminary determinations no later than 65 days after the date of initiation, unless postponed. Currently, the preliminary determinations in these investigations are due no later than July 5, 2016.[2]

Postponement of Preliminary Determinations

Section 703(c)(1)(B) of the Act permits the Department to postpone the time limit for the preliminary determination if it concludes that the parties concerned are cooperating and determines that the case is extraordinarily complicated by reason of the number and complexity of the transactions to be investigated or adjustments to be considered, the novelty of the issues presented, the need to determine the extent to which particular countervailable subsidies are used by individual companies, or the number of firms whose activities must be investigated, and additional time is necessary to make the preliminary determination. Under this section of the Act, the Department may postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

The Department determines that the parties involved in these CTL plate CVD investigations are currently cooperating and that the investigations are extraordinarily complicated, such that we will need more time to make the preliminary determinations. Specifically, the Department finds that these investigations are both extraordinarily complicated by reason of the number and complexity of the alleged countervailable subsidy practices, and the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters.

Therefore, in accordance with section 703(c)(l)(B) of the Act and 19 CFR 351.205(f)(l), the Department is postponing the time period for the preliminary determinations of these investigations by 65 days, to September 6, 2016.[3] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

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[1] *See Carbon and Alloy Steel Cut-to-Length Plate from Brazil, the People's Republic of China, and the Republic of Korea: Initiation of Countervailing Duty Investigations,* 81 FR 27098 (May 5, 2016). This notice of postponement of preliminary determinations applies to the PRC and Korea only, as the International Trade Commission terminated the investigation of allegedly subsidized imports of certain carbon and alloy steel cut-to-length plate from Brazil, pursuant to section 703(a)(1) of the Tariff Act of 1930, as amended (the Act). *See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey; Determinations,* 81 FR 33705 (May 27, 2016).

[2] *See Initiation Notice,* 81 FR at 27101. We note that the current deadline for the preliminary determinations is July 2, 2016, which is a Saturday. Pursuant to Department practice, the signature date would be the next business day, which is Tuesday, July 5, 2016. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[3] *Id.* The deadline for the postponed preliminary determination would be September 5, 2016, *i.e.* not later than 130 days after the date of initiation. September 5, 2016 is Labor Day. Pursuant to Department practice, the signature date will be the next business day, which is Tuesday, September 6, 2016.

Dated: June 10, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–14302 Filed 6–16–16; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

Comments Must Be Received on or Before: 7/17/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Products

NSN(s)—Product Name(s):
7930–00–NIB–0578—Disinfectant 256 Cleaner, Neutral, Concentrated, High Dilution
7930–00–NIB–0579—Disinfectant PD–128 Cleaner, Intermediate, Broad Spectrum, Concentrated
8125–00–NIB–0031—Spray Bottle, High Dilution 256 Neutral Disinfectant, 32 oz. Bottle
8125–00–NIB–0032—Spray Bottle, PD–128 Disinfectant Cleaner, 32 oz. Bottle

Mandatory for: Department of Veterans Affairs
Mandatory Source(s) of Supply: VisionCorps, Lancaster, PA
Contracting Activity: Department of Veterans Affairs, Strategic Acquisition Center, Fredericksburg, VA
Distribution: C-List

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 6530–01–505–0214—Bottle, Prescription, 200cc
Mandatory Source(s) of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL
NSN(s)—Product Name(s): 7045–01–599–5293—Privacy Filter, Netbooks, 10.1Widescreen
Mandatory Source(s) of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 7045–01–570–8906—Privacy Filter, Notebook, 12.1″
Mandatory Source(s) of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activities: Department of Veterans Affairs, NAC, Hines, IL General Services Administration, New York, NY

Services

Service Types: Library Service Family Housing Maintenance
Mandatory for: Travis Air Force Base, Travis Air Force Base, CA Beale Air Force Base, Beale Air Force Base, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD
Service Type: Baggage Inspection Service
Mandatory for: Travis Air Force Base: Air Passenger Terminal Travis Air Force Base, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD
Service Type: Furnishings Management Service
Mandatory for: Travis Air Force Base, Travis Air Force Base, CA
Mandatory Source(s) of Supply: Pacific Coast Community Services, Richmond, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD
Service Type: Linen Service
Mandatory for: Hickam Air Force Base, Hickam Air Force Base, HI
Mandatory Source(s) of Supply: Network Enterprises, Inc., Honolulu, HI
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD
Service Type: Facilities Management Service
Mandatory for: Television Audio Support Activity (TASA) McClellan AFB, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD
Service Type: Family Housing Maintenance Service
Mandatory for: Travis Air Force Base, Travis AFB, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD
Service Type: Laundry and Linen Service
Mandatory for: US Air Force 2610 Pink Flamingo Avenue MacDill AFB, FL
Mandatory Source(s) of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Contracting Activity: Dept of the Air Force, FA4814 6 CONS LGCP, Tampa, FL

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–14396 Filed 6–16–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes a product and service from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 7/17/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 5/13/2016 (81 FR 29848), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the service to the Government.

2. The action will result in authorizing a small entity to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service:

Service Type: Custodial and Related Service
Mandatory for: GSA PBS Region 5, SSA Federal Building, 611 E. Genesee Avenue, Saginaw, MI
Mandatory Source(s) of Supply: SVRC Industries, Inc., Saginaw, MI
Contracting Activity: Public Buildings Service, Acquisition Management Division, Dearborn, MI

Deletions

On 5/6/2016 (81 FR 27419–27420) and 5/13/2016 (81 FR 29848), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product and service deleted from the Procurement List.

End of Certification

Accordingly, the following product and service are deleted from the Procurement List:

Product:

NSN(s)—Product Name(s): 3990–00–NSH–0065—Skid, Wood
Contracting Activity: Government Printing Office, Washington, DC

Service:

Service Type: Toner Cartridge Remanufacturing Service
Mandatory for: Malmstrom Air Force Base, Malmstrom AFB, MT
Mandatory Source(s) of Supply: Community Option Resource Enterprises, Inc. (COR Enterprises), Billings, MT
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–14397 Filed 6–16–16; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0023]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice AAFES 0403.01, entitled "Application for Employment Files" in its existing inventory of records systems subject to the Privacy Act of 1974, as amended. This system is used in considering individuals who have applied for positions in the Army and Air Force Exchange Service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions.

DATES: Comments will be accepted on or before July 18, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905; telephone (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on May 27, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: June 14, 2016.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0403.01

SYSTEM NAME:

Application for Employment Files (August 9, 1996, 61 FR 41574).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Segments of the system exist at servicing civilian personnel offices at Exchange U.S. Operations Offices, and post/base exchanges worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have applied for employment with the Army and Air Force Exchange Service (Exchange)."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records may vary depending on: The applicant's nationality/citizenship; job location, including jobs outside of the United States; and/or host nation employment information requirements, if applicable.

Files may contain the individual's name, Social Security Number (SSN), Taxpayer Identification Number (ITIN), National ID Card, Passport/Visa information, names of relatives who work for the Exchange, parent's names, spouse's names, foreign languages spoken, Exchange location, home address, date and place of birth, date of hire, citizenship including race and/or ethnicity, marital status, sex, security clearance, military status, notification from the Exchange concerning selection/non-selection, sponsor affiliation where employee is a dependent of a U.S. Government/military member, vehicle license numbers, physical examination documents, medical history, education history, employment history and experience, work licenses, career plans, personnel evaluation reports, job recommendations and character references, awards, training course data, driving history and criminal history.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Title 10 U.S.C. 3013, Secretary of the Army; Title 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 215–3, Morale, Welfare, and Recreation Nonappropriated Funds Instrumentalities Personnel Policy; Army Regulation 215–8/AFI 34–211(I), Army and Air Force Exchange Service Operations; and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to issue bonds; to collect and record income taxes.

To former spouses, who receive payments under Title 10 U.S.C. 1408, for the purposes of providing information on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.

To Federal, state, or local child support agencies, in response to their written requests for information regarding the gross and disposable pay of civilian employees, for purposes of assisting the agencies in the discharge of their responsibilities under Federal and State law.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*"

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper records and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "By name, SSN and/or ITIN."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) with an official "need to know" who are responsible for servicing the record in performance of their official duties. Persons are properly screened and cleared for access. Access to electronic records is role-based and further restricted by passwords, which are changed periodically."

RETENTION AND DISPOSAL:

Delete entry and replace with "Non-selected applicant records are retained for up to six months and then destroyed by shredding or deletion from the applicant database; records for applicants hired become part of the person's Official Personnel Folder. Upon the separation of the employee, the file will be transferred to the National Personnel Records Center (NPRC) in Valmeyer, IL and maintained for an additional 65 years."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, SSN, current address and telephone number and signature. If terminated, also include date of birth, date of separation, and last employing location and sufficient details to permit locating the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'"

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director/Chief Executive Officer, Attn: FOIA/Privacy Manager, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, SSN, current address and telephone number and signature. If terminated, also include date of birth, date of separation, and last employing location.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From the employee, his/her supervisor, educational institutions, previous employers, law enforcement agencies, court orders and medical authorities."

* * * * *

[FR Doc. 2016–14371 Filed 6–16–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), Section 5018.

DATES: The agency must receive completed applications and endorsement letters no later than July 15, 2016.

ADDRESSES: Mail completed applications and endorsement letters to Brigadier General Scott Spellmon, Commander; Northwestern Division, U.S. Army Corps of Engineers; P.O. Box 2870; Portland, Oregon 97208, or email completed applications to *info@mrric.org.* Please put "MRRIC" in the subject line.

FOR FURTHER INFORMATION CONTACT: Jamie S. Danesi, 402–995–2972.

New for 2016: The application process applies to both Primary and Alternate applicant. See Process to Fill MRRIC Vacancies document at *www.MRRIC.org.*

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Sec. 334(a) of WRDA 1999, Public Law 106–53, and Sec. 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *www.MRRIC.org.*

Purpose and Scope of the Committee

1. The primary purpose of the MRRIC is to provide guidance to the Corps and U.S. Fish and Wildlife Service with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *www.MoRiverRecovery.org.*

2. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. Members and alternates must be able to demonstrate that they meet the definition of "stakeholder" found in the Charter of the MRRIC. Applications are currently being accepted for representation in the stakeholder interest categories listed below:

a. Fish and Wildlife;
b. Flood Control;
c. Irrigation;
d. Water Quality;
e. Waterway Industries;
f. Conservation Districts;
g. Major Tributaries;
h. Thermal Power; and
i. At Large.

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking reappointment do not need to re-submit an application. However, they must submit a renewal letter and related materials as outlined in the "Streamlined Process for Existing

Members" portion of the document *Process for Filling MRRIC Stakeholder Vacancies* (*www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee are not currently reimbursed by the federal government as specific funding for this purpose has not been appropriated at this time.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities may apply for stakeholder membership on the MRRIC. Committee members are obligated to avoid and disclose any individual ethical, legal, financial, or other conflicts of interest they may have involving MRRIC. Applicants must disclose on their application if they are directly employed by a government agency or program (the term "government" encompasses state, tribal, and federal agencies and/or programs).

Applications for stakeholder membership may be obtained electronically at *www.MRRIC.org.* Applications may be emailed or mailed to the location listed (see **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person is qualified to represent;
2. A written statement describing the applicant's area of expertise and why the applicant believes he or she should be appointed to represent that area of expertise on the MRRIC;
3. A written statement describing how the applicant's participation as a Stakeholder Representative will fulfill the roles and responsibilities of MRRIC;
4. A written description of the applicant's past experience(s) working collaboratively with a group of individuals representing varied interests towards achieving a mutual goal, and the outcome of the effort(s);
5. A written description of the communication network that the applicant plans to use to inform his or her constituents and to gather their feedback, and
6. A written endorsement letter from an organization, local government body, or formal constituency, which demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on July 15, 2016, at the location indicated (see **ADDRESSES**). Applications must include an endorsement letter to be considered complete. Full consideration will be given to all complete applications received by the specified due date.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the *Process for Filling MRRIC Stakeholder Vacancies* document (*www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.
- Demonstration of an established communication network to keep constituents informed and efficiently seek their input when needed.
- Agreement to participate in collaboration training as a condition of membership.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Dated: June 8, 2016.

Jamie S. Danesi,

Project Manager for the Missouri River Recovery Implementation Committee (MRRIC).

[FR Doc. 2016–14338 Filed 6–16–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0070]

Agency Information Collection Activities; Comment Request; Guaranty Agency Financial Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 16, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0070. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Guaranty Agency Financial Report.

OMB Control Number: 1845–0026.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 672.

Total Estimated Number of Annual Burden Hours: 36,960.

Abstract: The Guaranty Agency financial Reports is used by a guaranty agency to request payments of reinsurance for defaulted student loans; make payments for amounts due the Department, for collections on default and lender of last resort loan (default) claims on which reinsurance has been paid and for refunding amounts previously paid for reinsurance claims. The form is also used to determine required reserve levels for agencies and to collect debt information as required for the "Report on Accounts and Loans Receivable Due from the Public," SF 220–9 (Schedule 9 Report) as required by the U.S. Department of Treasury.

Dated: June 14, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–14372 Filed 6–16–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0068]

Agency Information Collection Activities; Comment Request; Carl D. Perkins Career and Technical Education Act State Plan

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 16, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0068. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202–245–7405.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Carl D. Perkins Career and Technical Education Act State Plan.

OMB Control Number: 1830–0029.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 2,240.

Abstract: This information collection solicits from all eligible States and outlying areas the State plans required under Title I of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (Pub.L. 109–270), as well as, for those States and outlying areas that fail to meet 90 percent of their performance levels for an indicator for three consecutive years, periodic reports on their progress in implementing the improvement plans required by section 123(a)(1) of Perkins IV.

Dated: June 14, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–14385 Filed 6–16–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0069]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Native Hawaiian Career and Technical Education Grant Application (NHCTEP) (1894–0001)

AGENCY: Department of Education (ED), Office of Career, Technical, and Adult Education (OCTAE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 18, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0069. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202–245–7405.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Native Hawaiian Career and Technical Education Grant Application (NHCTEP) (1894–0001).

OMB Control Number: 1830–0564.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 1,200.

Abstract: This is a request for extension of the approval of the information collection which solicits applications for the Native Hawaiian Career and Technical Education Program (NHCTEP). NHCTEP, authorized by section 116 (h) of the Carl D. Perkins Career and Technical Education Act of 2006 (Pub. L. 109–270) (20 U.S.C.2301, provides grants to community-based organizations primarily serving and representing Native Hawaiians. Grant funds are used for expenses associated with developing challenging academic and technical standards, especially in preparation for high-skill, high-wage, or high-demand occupations in established or emerging professions; and providing technical assistance and professional development that improves the quality of career and technical education teachers, faculty, administrators, and counselors. Students are provided stipends, tuition, books, fees, childcare, counseling, job placement, transportation, supplies, specialized tools and uniforms that are necessary to fully and effectively participate in career and technical education programs. Programs are designed to provide one year certificate or two year degrees.

Dated: June 14, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–14386 Filed 6–16–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before August 16, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Christine Askew, U.S. Department of Energy, EE–5W/Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585 or by fax at 202–287–1992, or by email at *christine.askew@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christine Askew at *christine.askew@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. "1910–5127"; (2) Information Collection Request Title: "Weatherization Assistant Program (WAP)"; (3) Type of Review: New; (4) Purpose: To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously; (5) Annual Estimated Number of Respondents: 59; (6) Annual Estimated Number of Total Responses: 696; (7) Annual Estimated Number of Burden Hours: 2,088; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), PL 110–140.

Issued in Washington, DC, on May 18, 2016.

Erica Burrin,

Acting Program Manager, Weatherization Assistance Program, Weatherization and Intergovernmental Program

[FR Doc. 2016–14387 Filed 6–16–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 21, 2016 from 3:30 p.m. to 4:30 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Michael Li, Policy Advisor, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202–287–5718, and email *michael.li@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive STEAB Task Force updates on action items and revised objectives for FY 2016, discuss follow-up opportunities and engagement with EERE and other DOE staff as needed to keep Task Force work moving forward, continue engagement with DOE, EERE and EPSA staff regarding energy efficiency and renewable energy projects and initiatives, and receive updates on member activities within their states. Recap June meeting and follow-up on action items from that meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: *http://www.energy.gov/eere/steab/state-energy-advisory-board.*

Issued at Washington, DC, on June 10, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–14388 Filed 6–16–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–84–000]

Competitive Transmission Developers v. New York Independent System Operator, Inc.; Notice of Complaint

Take notice that on June 10, 2016, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Boundless Energy NE., LLC, CityGreen Transmission, Inc. and Miller Bros (collectively, Competitive Transmission Developers or Complainant) filed a formal complaint against the New York Independent System Operator, Inc. (NYISO or Respondent) alleging violation of the NYISO Open Access Transmission Tariff and requesting that the Commission direct the NYISO to reissue a project solicitation for the AC Transmission Public Policy Transmission Needs Project Solicitation, as more fully explained in the complaint.

Competitive Transmission Developers certify that a copy of the complaint was served on a representative from NYISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 30, 2016.

Dated: June 13, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14341 Filed 6–16–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–637–005; ER11–2370–005; ER10–2211–005.

Applicants: Calhoun Power Company, LLC, Cambria CoGen Company, Vandolah Power Company L.L.C.

Description: Non-Material Change in Status Filing of Calhoun Power Company, LLC, et al.

Filed Date: 6/10/16.

Accession Number: 20160610–5313.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–228–002.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: 3113 Basin & MDU Attachment AO Amended Compliance Filing to be effective 10/1/2015.

Filed Date: 6/13/16.

Accession Number: 20160613–5033.

Comments Due: 5 p.m. ET 7/5/16.

Docket Numbers: ER16–1689–001.

Applicants: ArcelorMittal Cleveland LLC.

Description: Tariff Amendment: Supplement to Petition for Acceptance of Market-Base Rate Tariff to be effective 6/30/2016.

Filed Date: 6/13/16.

Accession Number: 20160613–5154.

Comments Due: 5 p.m. ET 7/5/16.

Docket Numbers: ER16–1912–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Out-of-Merit Energy Clarification to be effective 7/1/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5274.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1913–000.

Applicants: River Bend Solar, LLC.
Description: Baseline eTariff Filing: River Bend Solar, LLC Application for Market-Based Rates to be effective 9/1/2016.
Filed Date: 6/10/16.
Accession Number: 20160610–5281.
Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1914–000.
Applicants: Patua Project LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 5/11/2016.
Filed Date: 6/10/16.
Accession Number: 20160610–5283.
Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1915–000.
Applicants: Oildale Energy LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 6/11/2016.
Filed Date: 6/10/16.
Accession Number: 20160610–5284.
Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1916–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2016–6–13 Wind Integration Correction Filing to be effective 1/1/2015.
Filed Date: 6/13/16.
Accession Number: 20160613–5108.
Comments Due: 5 p.m. ET 7/5/16.

Docket Numbers: ER16–1917–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo Wind Integration Correction to be effective 4/16/2016.
Filed Date: 6/13/16.
Accession Number: 20160613–5109.
Comments Due: 5 p.m. ET 7/5/16.

Docket Numbers: ER16–1918–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20160613 Production Compliance (Wind Integration) to be effective 4/16/2016.
Filed Date: 6/13/16.
Accession Number: 20160613–5205.
Comments Due: 5 p.m. ET 7/5/16.

Docket Numbers: ER16–1919–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20160613 Production Compliance (Wind Integration) to be effective 1/1/2015.
Filed Date: 6/13/16.
Accession Number: 20160613–5207.
Comments Due: 5 p.m. ET 7/5/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 13, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–14340 Filed 6–16–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–58–000.
Applicants: Atmos Pipeline-Texas.
Description: NGPA Section 311 Periodic Rate Review Certification.
Filed Date: 6/6/2016.
Accession Number: 201606065337.
Comments/Protests Due: 5 p.m. ET 6/27/16.

Docket Numbers: RP15–23–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: Report Filing: RP15–23 Refund Report.
Filed Date: 2/26/16.
Accession Number: 20160226–5043.
Comments Due: 5 p.m. ET 6/10/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 8, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–14308 Filed 6–16–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1020–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Amendments to NC Agmts (Oglethorpe 8481, 8482) to be effective 6/7/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5047.
Comments Due: 5 p.m. ET 6/20/16.

Docket Numbers: RP16–1021–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Delphi Energy to Chinook Energy to be effective 6/1/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5061.
Comments Due: 5 p.m. ET 6/20/16.

Docket Numbers: RP16–1022–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Compliance filing Pre-Filing Rate Case Settlement Associated with Docket No. RP11–2107 to be effective 12/31/9998.
Filed Date: 6/8/16.
Accession Number: 20160608–5179.
Comments Due: 5 p.m. ET 6/20/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–748–001.
Applicants: Gulf Shore Energy Partners, LP.
Description: Compliance filing Gulf Shore Energy Filing—Compliance Filing Amendment to be effective 4/1/2016.
Filed Date: 6/8/16.

Accession Number: 20160608–5077.
Comments Due: 5 p.m. ET 6/20/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14309 Filed 6–16–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9027–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs).

Filed 06/06/2016 Through 06/10/2016.

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160135, Draft, NOAA, FL, Amendment 37 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, Modification to the Hogfish Fishery Management Unit, Fishing Level Specifications for the Two South Atlantic Hogfish Stocks, Rebuilding Plan for the Florida Keys/East Florida Stock, and Establishment/Revision of Management Measures for Both Stocks, Comment Period Ends: 08/01/2016, Contact: Nikhil Mehta 727–551–5098.

EIS No. 20160136, Final, USACE, PA, Upper Ohio Navigation Study, Review Period Ends: 07/18/2016, Contact: Conrad Weiser 412–395–7314.

EIS No. 20160137, Final, USACE, FL, Southern Palm Beach Island Comprehensive Shoreline Stabilization Project, Review Period Ends: 07/18/2016, Contact: Krista Sabin 561–472–3529.

Amended Notices

EIS No. 20160096, Draft, USFWS, CA, Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges Draft Comprehensive Conservation Plan, Comment Period Ends: 08/04/2016, Contact: Mark Pelz 916–414–6464 Revision to FR Notice Published 05/06/2016, Extending Comment Period from 06/20/2016 to 08/04/2016.

EIS No. 20160114, Final, FHWA, TX, Grand Parkway (State Highway 99) Segment B, Review Period Ends: 07/11/2016, Contact: Carlos Swonke 512–416–2734 Revision to FR Notice Published 06/03/2016; Correction to the Review Period to end 07/11/2016.

Dated: June 14, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–14404 Filed 6–16–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2016–0196; FRL–9947–79–ORD]

Updates to the Demographic and Spatial Allocation Models To Produce Integrated Climate and Land Use Scenarios (ICLUS) Version 2; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period; correction.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, "Updates to the Demographic and Spatial Allocation Models to Produce Integrated Climate and Land Use Scenarios (ICLUS) Version 2" (EPA/600/R–14/324). EPA is also announcing that Versar, Inc., an EPA contractor for external scientific peer review, will select four independent experts from a pool of eight to conduct a letter peer review of the same draft document. The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development. This document describes the development of version 2 of Integrated Climate and Land Use Scenarios (ICLUS), including updates to data sets and the demographic and spatial allocation models.

EPA intends to forward the public comments that are submitted in accordance with this document to the external peer reviewers for their consideration during the letter peer review. When finalizing the draft documents, EPA intends to consider any public comments received in response to this document. EPA is releasing this draft document for the purposes of public comment and peer review. This draft document is not final as described in EPA's information quality guidelines and does not represent and should not be construed to represent Agency policy or views.

The draft document is available via the Internet on EPA's Risk Web page under the Recent Additions at *http://www.epa.gov/risk.*

Correction

In the **Federal Register** of April 29, 2016, in FR Doc. 2016–09860, on page 25666, in the second column correct the **DATES** section to read:

DATES: The 7-day public comment period begins June 17, 2016, and ends June 24, 2016. Comments must be received on or before June 24, 2016.

Dated: June 8, 2016.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2016–14287 Filed 6–16–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0936]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 16, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0936.

Title: Sections 95.1215, 95.1217, 95.1223 and 95.1225, Medical Device Radiocommunications Service (MedRadio).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 3,120 respondents; 3,120 responses.

Estimated Time per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151 and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 9,120 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission is requesting that the Office of Management and Budget (OMB) approve for a period of three years an extension for the information collection requirements contained in this collection.

The information collection requirements that are approved under this information collection are contained in 47 CFR 95.1225(b) and (c), 95.1217(a)(3) and (c), 95.1223 and 95.1225 which relate to the Medical Device Radiocommunication Service (MedRadio).

The information is necessary to allow the coordinator and parties using the database to contact other users to verify information and resolve potential conflicts. Each user is responsible for determining in advance whether new devices are likely to cause or be susceptible to interference from devices already registered in the coordination database.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–14402 Filed 6–16–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0951]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 16, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0951.

Title: Sections 1.204(b) Note and 1.1206(a) Note 1, Service of Petitions for Preemption.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Individuals or households; Not-for-profit institutions; and State, local or Tribal Government.

Number of Respondents and Responses: 125 respondents; 125 responses.

Estimated Time per Response: 0.28 hours (17 minutes).

Frequency of Response: On occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, and 303.

Total Annual Burden: 35 hours.

Total Annual Cost: No Cost.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

The FCC has a system of records, FCC/OGC–5, "Pending Civil Cases," to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individuals may submit with their petitions for preemption that they file with the Commission.

Needs and Uses: These provisions supplement the procedures for filing petitions seeking Commission preemption of state and local government regulation of telecommunications services. They require that such petitions, whether in the form of a petition for rulemaking or a petition for declaratory ruling, be served on all state and local governments. The actions for which are cited as a basis for requesting preemption. Thus, in accordance with these provisions, persons seeking preemption must serve their petitions not only on the state or local governments whose authority would be preempted, but also on other state or local governments whose actions are cited in the petition.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–14334 Filed 6–16–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Recordkeeping Requirements Associated with the Interagency Statement on Complex Structured Finance Activities.

Agency form number: FR 4022.

OMB control number: 7100–0311.

Frequency: Annual.

Reporters: State member banks, bank holding companies, and U.S. branches and agencies of foreign banks.

Estimated annual burden hours: 180 hours.

Estimated average hours per response: 10 hours.

Number of respondents: 18 Respondents.

General description of report: Sections 11(a), 11(i), 21, and 25 of the Federal Reserve Act (12 U.S.C. 248(a), 248(i), 483, and 602) authorize the Board to issue the information collection and recordkeeping guidance associated with the Interagency Statement. In addition, section 5(c) of the Bank Holding Company Act (12 U.S.C 1844(c)), section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a (b)(2)), and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) provide further authority for the Board to issue such rules and guidance. As a guidance document, the Interagency Statement is voluntary, although conformance with the guidance may be the subject of review during examinations of institutions engaged in CSFTs. No information is collected by the Board in connection with the Interagency Statement, so the issue of confidentiality does not ordinarily arise. Should an institution's policies or procedures adopted pursuant to the Interagency Statement be retained as part of the record of an institution's examination, the records would be exempt from disclosure under exemption (b)(8) of the Freedom of Information Act, 5 U.S.C. 552(b)(8).

Abstract: The guidance provides that state member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve should establish and maintain policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with certain complex structured finance transactions (CSFTs).

A financial institution engaged in CSFTs should maintain a set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal, and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations, and standards of those jurisdictions.

A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. A financial institution should define what constitutes a new complex structured finance product and establish a control process for the approval of such new product. An institution's policies also should provide for new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the products are offered to customers.

Current Actions: On April 4, 2016, the Board published a notice in the **Federal Register** (81 FR 19178) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 4022. The comment period for this notice expired on June 3, 2016. The Federal Reserve did not receive any comments, and the information collection will be extended as proposed.

Board of Governors of the Federal Reserve System, June 13, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–14300 Filed 6–16–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Fred L. Drake, Hudson, Illinois, not Individually but as trustee of the Voting Trust dated as of May 4, 2016, and Allen C. Drake, El Paso Illinois, not individually but as successor trustee of such Voting Trust, and the following holders of voting trust certificates of such Voting Trust: Allen C. Drake, El Paso, Illinois, individually, as trustee of The George E. Drake Inter-vivos Family Trust dated May 16, 1985 and as trustee of the Elinor Drake Grandchildren Trust dated July 8, 1995; Arthur M. Drake, Bloomington, Illinois, individually and as trustee of the Arthur M. Drake Trust dated July 21, 2015; Fred L. Drake, Hudson, Illinois, not individually but as trustee of the Fred L. Drake Revocable Trust dated March 27, 2014 and as trustee of the Elinor Drake Grandchildren Trust dated July 8, 1995; Marcia Dudley, El Paso, Illinois; George E. Drake, El Paso, Illinois; Rita M. Drake, El Paso, Illinois; Matthew S. Drake, Morton, Illinois; John A. Drake, Sun Prairie, Wisconsin; Carl T. Drake, Bloomington, Illinois; James J. Drake, El Paso, Illinois; Sarah S. Eisenmann, Elmhurst, Illinois; Janet A. Drake, Bloomington, Illinois, not individually but as trustee of the Janet A. Drake Trust dated July 21, 2015; Jennifer Goemans, Sun Prairie, Wisconsin; Christopher A. Drake, Waunakee, Wisconsin; Michael E. Drake, Sun Prairie, Wisconsin; Jamie L. Drake, Hudson, Illinois, not individually but as trustee of the Jamie L. Drake Revocable Trust dated March 27, 2014; Melissa L. Drake, Hudson, Illinois; Monica Refsnyder, Tampa, Florida; Jeffrey G. Drake, Louisville, Kentucky; Martin K. Dudley, El Paso, Illinois; David M. Dudley, Leroy, Illinois; Joel T. Dudley, Chicago, Illinois; Andrea L. Dudley, Normal, Illinois; and Craig R. Dudley, Western Springs, Illinois;* to retain 25 percent or more of the shares and thereby control of Heartland Bancorp, Inc., Bloomington, Illinois, and thereby indirectly control Heartland Bank and Trust Company, Bloomington, Illinois.

Board of Governors of the Federal Reserve System, June 14, 2016.

Michele Taylor Fennell,
Assistant Secretary of the Board.

[FR Doc. 2016–14381 Filed 6–16–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0045; Docket 2016–0053; Sequence 19]

Submission for OMB Review; Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections

Correction

In Notice document 2016–13860, appearing on pages 38180–38181, in the Issue of Monday, June 13, 2016, make the following correction:

On page 38180, in the third column, under the heading "**DATES:**" the entry "August 12, 2016" is corrected to read "July 13, 2016".

[FR Doc. C1–2016–13860 Filed 6–16–16; 8:45 am]

BILLING CODE 1505–01–D

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Nominations for Board of Governors of the Patient-Centered Outcomes Research Institute (PCORI)

AGENCY: Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Patient Protection and Affordable Care Act gave the Comptroller General of the United States responsibility for appointing 19 members to the Board of Governors of the Patient-Centered Outcomes Research Institute. In addition, the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, or their designees, are members of the Board. As the result of terms ending in September 2016, GAO is accepting nominations in the following two categories required in statute: A representative of hospitals, and a representative of pharmaceutical, device, or diagnostic manufacturers or developers. Letters of nomination and resumes should be submitted no later than July 21, 2016 to ensure adequate opportunity for review and consideration of nominees prior to appointment. Acknowledgement of submissions will be provided within a week of submission. Please contact Mary Giffin at (202) 512–3710 if you do not receive an acknowledgement.

ADDRESSES: Nominations can be submitted to either of the following: Email: *PCORI@gao.gov.* Mail: U.S. GAO, Attn: PCORI Board Appointments, 441 G Street NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: GAO: Office of Public Affairs, (202) 512–4800. [Sec. 6301 and Sec. 10602, Pub. L. 111–148]

Gene L. Dodaro,
Comptroller General of the United States.

[FR Doc. 2016–14157 Filed 6–16–16; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10598 and CMS–10605]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 16, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10598 Clearance for Evaluation of Stakeholder Training—Health Insurance Marketplace and Market Stabilization Programs

CMS–10605 The Health Insurance Enforcement and Consumer Protections Grant Program Cycle I

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Clearance for Evaluation of Stakeholder Training—Health Insurance Marketplace and Market Stabilization Programs; *Use:* CMS is strongly committed to providing appropriate education and technical outreach to States, issuers, self-insured group health plans and third-party administrators (TPA) participating in the Marketplace and/or market stabilization programs mandated by the ACA. CMS continues to engage with stakeholders in the Marketplace to obtain input through Satisfaction Surveys following Stakeholder Training events. The survey results will help to determine stakeholders' level of satisfaction with trainings, identify any issues with training and technical assistance delivery, clarify stakeholders' needs and preferences, and define best practices for training and technical assistance. Forms being utilized for the 2017 Stakeholder Events have already been developed. CMS will continue to modify, enhance and develop forms for future years based on feedback from Stakeholders. *Form Number:* CMS–10598 (OMB Control No. 0938–NEW); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 32,912; *Number of Responses:* 32,912; *Total Annual Hours:* 8,228. (For questions regarding this collection contact Sonia Henderson at 301–492–4320).

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* The Health Insurance Enforcement and Consumer Protections Grant Program; *Use:* Section 1003 of the Affordable Care Act (ACA) adds a new section 2794 to the PHS Act entitled, "Ensuring That Consumers Get Value for Their Dollars." Specifically, section 2794(a) requires the Secretary of the Department of Health and Human Services (the Secretary) (HHS), in conjunction with the States, to establish a process for the annual review of health insurance premiums to protect consumers from unreasonable rate increases. Section 2794(c) directs the Secretary to carry out a program to award grants to States. Section 2794(c)(2)(B) specifies that any appropriated Rate Review Grant funds that are not fully obligated by the end of FY 2014 shall remain available to the Secretary for grants to States for planning and implementing the insurance market reforms and consumer protections under Part A of title XXVII of the Public Health Service Act (PHS Act). States that apply for funds are required to complete the grant application. States that are awarded funds under this funding opportunity are required to provide the CMS with four quarterly reports, and one annual report per year (except for the last year of the grant) until the end of the grant period detailing the state's progression towards planning and/or implementing the market reforms under Part A of Title XXVII of the PHS Act. A final report is due at the end of the grant period. *Form Number:* CMS–10605 (OMB control number: 0938–NEW); *Frequency:* Annually and Quarterly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 20; *Total Annual Responses:* 100; *Total Annual Hours:* 3,120. (For policy questions regarding this collection contact Jim Taing at (301) 492–4182).

Dated: June 14, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–14409 Filed 6–16–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10377, CMS–10338, CMS–10465, CMS–10443, and CMS–10379]

Agency Information Collection Activities: Submission for OMB Review; Comment Request.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 18, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *or* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Student Health Insurance Coverage; *Use:* Under the Student Health Insurance Coverage Final Rule published March 21, 2012 (77 FR 16453), an issuer that provides student health insurance coverage that does not meet the annual dollar limits requirements under Public Health Service Act (PHS Act) section 2711 must provide notice in the insurance policy or certificate and in any other written materials informing students that the policy being issued does not meet the annual limits requirements under the Affordable Care Act. The Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 Final Rule removed outdated provisions in § 147.145(b)(2) and (d) allowing student health insurance issuers to impose restricted annual dollar limits on policies started before January 1, 2014, with an accompanying requirement that student health issuers must provide notice to students. Those provisions, by their own terms, no longer apply and student health insurance issuers are subject to the prohibition on annual dollar limits under PHS Act section 2711 and § 147.126 for policy years beginning on or after January 1, 2014. Therefore, the annual limit notification requirement is being discontinued.

The Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 Final Rule further provides that, for policy years beginning on or after July 1, 2016, student health insurance coverage is exempt from the actuarial value (AV) requirements under section 1302(d) of the Affordable Care Act, but must provide coverage with an AV of at least 60 percent. This provision also requires issuers of student health insurance coverage to specify in any plan materials summarizing the terms of the coverage the AV of the coverage and the metal level (or the next lowest metal level) the coverage would otherwise satisfy under § 156.140. This disclosure will provide students with information that allows them to compare the student health coverage with other available coverage options. *Form Number:* CMS–10377 (OMB Control Number: 0938–1157); *Frequency:* Annually; *Affected Public:* Private Sector; *Number of Respondents:* 49; *Total Annual Responses:* 1,255,000; *Total Annual Hours:* 49. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371.)

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers; *Use:* The PHS Act section 2719 and paragraph (b)(2)(i) of the Appeals regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1, the Department of Labor (DOL) claims procedure regulation, and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations. Paragraph (b)(3)(i) requires issuers offering coverage in the individual health insurance market to also comply with the DOL claims procedure regulation as updated by the Secretary of Health and Human Services (HHS) in paragraph (b)(3)(ii) of the Appeals regulation for their internal claims and appeals processes.

The PHS Act section 2719 and the Appeals regulation also provide that health insurance issuers and self-funded nonfederal governmental health plans must comply either with a State external review process or a Federal review process. The IFR provides a basis for determining when health insurance issuers and self-funded non-federal governmental health plans must comply with an applicable State external review process and when they must comply with the Federal external review process.

The PRA coverage and any burdens contained herein recognize requirements that the Department identified in the NAIC Uniform Health Carrier External Review Model Act that must be met or exceeded. The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. *Form Number:* CMS–10338 (OMB control number: 0938–1099); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits and not-for-profit institutions); *Number of Respondents:* 95,500; *Number of Responses:* 399,000,000; *Total Annual Hours:* 2,322,500. (For policy questions regarding this collection contact Leslie Wagstaffe at (301) 492–4251.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Minimum Essential Coverage; *Use:* The final rule titled "Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions," published July 1, 2013 (78 FR 39494) designates certain types of health coverage as minimum essential coverage. Other types of coverage, not statutorily designated and not designated as minimum essential coverage in regulation, may be recognized by the Secretary of Health and Human Services (HHS) as minimum essential coverage if certain substantive and procedural requirements are met. To be recognized as minimum essential coverage, the coverage must offer substantially the same consumer protections as those enumerated in the Title I of Affordable Care Act relating to non-grandfathered, individual health insurance coverage to ensure consumers are receiving adequate coverage. The final rule requires sponsors of other coverage that seek to have such coverage recognized as minimum essential coverage to adhere to certain procedures. Sponsoring organizations must submit to HHS certain information about their coverage and an attestation that the plan substantially complies with the provisions of Title I of the Affordable Care Act applicable to non-grandfathered individual health insurance coverage. Sponsors must also provide notice to enrollees informing them that the plan has been recognized as minimum essential coverage for the purposes of the individual coverage requirement. *Form Number:* CMS–10465 (OMB control number 0938–1189); *Frequency:* Occasionally; *Affected Public:* Public and Private Sector; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 53. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371.)

4. *Type of Information Collection Request:* Extension of a previously approved collection. *Title of Information Collection:* Transcatheter Valve Therapy Registry and KCCQ–10; *Use:* The data collection is required by the Centers for Medicare and Medicaid Services (CMS) National Coverage Determination (NCD) entitled, "Transcatheter Aortic Valve Replacement (TAVR)". The TAVR device is only covered when specific conditions are met including that the heart team and hospital are submitting data in a prospective, national, audited registry. The data includes patient, practitioner and facility level variables that predict outcomes such as all cause mortality and quality of life. CMS finds that the Society of Thoracic Surgery/American College of Cardiology Transcatheter Valve Therapy (STS/ACC TVT) Registry, one registry overseen by the National Cardiovascular Data Registry, meets the requirements specified in the NCD on TAVR. The TVT Registry will support a national surveillance system to monitor the safety and efficacy of the TAVR technologies for the treatment of aortic stenosis.

The data will also include the variables on the eight item Kansas City Cardiomyopathy Questionnaire (KCCQ–10) to assess heath status, functioning and quality of life. In the KCCQ, an overall summary score can be derived from the physical function, symptoms (frequency and severity), social function and quality of life domains. For each domain, the validity, reproducibility, responsiveness and interpretability have been independently established. Scores are transformed to a range of 0–100, in which higher scores reflect better health status.

The conduct of the STS/ACC TVT Registry and the KCCQ–10 is in accordance with Section 1142 of the Social Security Act (the Act) that describes the authority of the Agency for Healthcare Research and Quality (AHRQ). Under section 1142, research may be conducted and supported on the outcomes, effectiveness, and appropriateness of health care services and procedures to identify the manner in which disease, disorders, and other health conditions can be prevented, diagnosed, treated, and managed clinically. Section 1862(a)(1)(E) of the Act allows Medicare to cover under coverage with evidence development (CED) certain items or services for which the evidence is not adequate to support coverage under section 1862(a)(1)(A) and where additional data gathered in the context of a clinical setting would further clarify the impact of these items and services on the health of beneficiaries.

The data collected and analyzed in the TVT Registry will be used by CMS to determine if the TAVR is reasonable and necessary (*e.g.,* improves health outcomes) for Medicare beneficiaries under section 1862(a)(1)(A) of the Act. Furthermore, data from the Registry will assist the medical device industry and the Food and Drug Administration (FDA) in surveillance of the quality, safety and efficacy of new medical devices to treat aortic stenosis. For purposes of the TAVR NCD, The TVT Registry has contracted with the Data Analytic Centers to conduct the analyses. In addition, data will be made available for research purposes under the terms of a data use agreement that only provides de-identified datasets. *Form Number:* CMS–10443 (OMB control number: 0938–1202); *Frequency:* Annual; *Affected Public:* Individuals, Households and Private Sector; *Number of Respondents:* 14,871; *Total Annual Responses:* 59,484; *Total Annual Hours:* 19,184. (For policy questions regarding this collection contact Sarah Fulton at 410–786–2749.)

5. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Rate Increase Disclosure and Review Reporting Requirements; *Use:* Section 1003 of the Affordable Care Act adds a new section 2794 of the PHS Act which directs the Secretary of the Department of Health and Human Services (the Secretary), in conjunction with the states, to establish a process for the annual review of "unreasonable increases in premiums for health insurance coverage." The statute provides that health insurance issuers must submit to the Secretary and the applicable state justifications for unreasonable premium increases prior to the implementation of the increases. Section 2794 also specifies that beginning with plan years beginning in 2014, the Secretary, in conjunction with the states, shall monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.

Section 2794 directs the Secretary to ensure the public disclosure of information and justification relating to unreasonable rate increases. Section 2794 requires that health insurance issuers submit justification for an unreasonable rate increase to CMS and the relevant state prior to its implementation. Additionally, section 2794 requires that rate increases effective in 2014 (submitted for review in 2013) be monitored by the Secretary, in conjunction with the states.

To those ends, section 154 of the CFR establishes various reporting requirements for health insurance issuers, including a Preliminary Justification for a proposed rate increase, a Final Justification for any rate increase determined by a state or CMS to be unreasonable, and a notification requirement for unreasonable rate increases which the issuer will not implement.

In order to obtain the information necessary to monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange, 45 CFR 154.215 would require health insurance issuers to submit the Unified Rate Review Template for all single risk pool coverage products in the individual or small group (or merged) market, regardless of whether any plan within a product is subject to a rate increase. That regulation would also require health insurance issuers to submit an Actuarial Memorandum (in addition to the Unified Rate Review Template) when a plan within a product is subject to a rate increase. Although the two required documents are submitted at the risk pool level, the requirement to submit is based on increases at the plan level. To conduct a review to assess reasonableness when a plan within a product has a rate increase that is subject to review, health insurance issuers would be required to submit a written description justifying the increase (in addition to the Unified Rate Review Template and Actuarial Memorandum). Although the required documents are submitted at the risk pool level, the requirement to submit is based on increases at the plan level. *Form Number:* CMS–10379 (OMB control number: 0938–1141); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions) and State agencies; *Number of Respondents:* 1,081; *Total Annual Responses:* 1,621; *Total Annual Hours:* 17,837. (For policy questions regarding this collection contact Lisa Cuozzo at 410–786–1746.)

Dated: June 14, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–14405 Filed 6–16–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Information Collection and Record Keeping for the Timely Placement and Release of Unaccompanied Children in ORR Care.

OMB No.:

Description: The ORR Unaccompanied Children Program provides placement, care, custody and mandated services for UC until such time as they can be successfully released to a sponsor, repatriated to their home country, or obtain legal status.

Through cooperative agreements and contracts, ORR funds residential care providers that provide temporary housing and other services to unaccompanied children in ORR custody. These care provider facilities are State licensed and must meet ORR requirements to ensure a high level quality of care. They provide a continuum of care for children, including placements in ORR foster care, group homes, shelter, staff secure, secure, and residential treatment centers. The care providers provide children with classroom education, health care, socialization/recreation, vocational training, mental health services, access to legal services, and case management.

In order to monitor performance and ensure compliance with statutory and regulatory requirements and standards, ORR:

- Collects information from its network of care providers to show evidence that care providers' standards of care, family reunification methods, internal policies and procedures, personnel, training, and other components meet minimum standards and ensure the safety and security of children in ORR care.
- Requires care providers to track the timely release process and delivery of services for individual children and youth to ensure compliance and allow ORR to conduct formal monitoring and performance review.

The tasks described in this supporting statement are mainly conducted through the ORR online database (The UC Portal), which provides a central location for case records and the documentation of other activities (for example, when a child or youth is transferred to another facility). Many of these records are "auto-populated" on the UC Portal once the original data points are completed (such as DOB, "A" number, date of initial placement). The UC Portal is a secure limited access database that requires two factor authentication. The use of electronic records also allows ORR Project Officers to more easily monitor grantee compliance with standards of care and record keeping compared with hard copy case files that are only available onsite. The database also allows ORR to more easily calculate bed capacity throughout the network so that resources are efficiently distributed, particularly during an influx when large numbers of unaccompanied children are crossing the border.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UC Portal Capacity Report	50	1	.16/hour	8
Further Assessment Swift Track (FAST) Placement Tool	2,320	1	.25/hour	580
Placement Authorization Form	58,000	1	.1/hour	5,800
Notice of Placement in Secure or Staff Secure Facility	2,320	1	.1/hour	232
Initial Intakes Form	58,000	1	.25/hour	14,500
UC Assessment	58,000	1	.50/hour	29,000
Individual Service Plan	58,000	1	.25	14,500
UC Case Review Form	58,000	1	.50/hour	29,000

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Sponsor Form	55,200	1	.25/hour	13,800
Transfer Request and Tracking Form	1,000	1	.25/hour	250
Long Term Foster Care Placement Memo	279	1	.1/hour	28
Travel Request Form for UC Long Term Foster Care	20	1	.25/hour	5
Notice of Transfer to ICE Chief Counsel and Change of Address	2,320	1	.1/hour	232
Care Provider Family Reunification Checklist	55,200	1	.1	5,520
Release Request	55,200	3	.25 hour	41,400
Discharge Notification	716	1	.25/hour	179
Verification of Release	55,200	1	.1/hour	5,520
Child Advocate Referral and Appointment Form	250	1	.50	125
Notice of Rights and Provision of Services Handout	58,000	1	.1/hour	5,800
Legal Service Provider List for UC	58,000	1	.1	5,800
URM Application	350	1	1	350
Withdrawal of Application or Declination of Placement Form	10	1	.1/hour	1
Standard Shelter Tour Request	60	1	.1/hour	6

Estimated Total Annual Burden Hours: 172,636.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–14350 Filed 6–16–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of the Award Two Single-Source Program Expansion Supplement Grant to Southwest Keys, Inc., Austin, TX.

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Notice of Award of two (2) single-source program expansion supplement grant to Southwest Keys, Inc. (SWK), in Austin, TX.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces the award of two (2) single-source program expansion supplement grant for $26,254,260 and $16,647,310 under the Unaccompanied Children's (UC) Program to support a program expansion supplement.

ORR has been identifying additional capacity to provide shelter for potential increases in apprehensions of Unaccompanied Children at the U.S. Southern Border. Planning for increased shelter capacity is a prudent step to ensure that ORR is able to meet its responsibility, by law, to provide shelter for Unaccompanied Children referred to its care by the Department of Homeland Security (DHS).

SWK has the infrastructure, licensing, and experience to meet the service requirements and the urgent need for expansion of capacity.

DATES: Supplemental award funds will support activities from October 1, 2015 through September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement, 330 C Street SW., Washington, DC 20201. Email: *DCSProgram@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR is continuously monitoring its capacity to shelter the unaccompanied children referred to HHS, as well as the information received from interagency partners, to inform any future decisions or actions.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet those requirements. The expansion of the existing program and its services through this supplemental award is a key strategy for ORR to be prepared to meet its responsibility to provide shelter for Unaccompanied Children referred to its care by DHS and so that the US Border Patrol can continue its vital national security mission to prevent illegal migration, trafficking, and protect the borders of the United States.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of the Department of Health and Human Services (HHS).

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D.

Cal. 1996), pertinent regulations and ORR policies and procedures.

Christopher Beach,

Senior Grants Policy Specialist, Office of Administration, Office of Financial Services, Division of Grants Policy.

[FR Doc. 2016–14378 Filed 6–16–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–E–0681 and FDA–2013–E–0676]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZILVER PTX DRUG ELUTING PERIPHERAL STENT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZILVER PTX DRUG ELUTING PERIPHERAL STENT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications by Boston Scientific Scimed, Inc., to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 16, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 14, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA–2013–E–0681 and FDA–2013–E–0676 for "Determination of Regulatory Review Period for Purposes of Patent Extension; ZILVER PTX DRUG ELUTING PERIPHERAL STENT." Received comments will be placed in the dockets and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device, ZILVER PTX DRUG ELUTING PERIPHERAL STENT. ZILVER PTX DRUG ELUTING PERIPHERAL STENT is indicated for improving luminal diameter for the treatment of *de novo* or restenotic symptomatic lesions in native vascular disease of the above-the-knee femoropopliteal arteries having reference vessel diameters from 4 millimeters (mm) to 9 mm and total lesion lengths up to 140 mm per limb and 280 mm per patient. Subsequent to this approval, the USPTO received a patent term restoration application for ZILVER PTX DRUG ELUTING PERIPHERAL STENT (U.S. Patent Nos. 6,515,009 and 7,820,193) from Boston Scientific Scimed, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of ZILVER PTX DRUG ELUTING PERIPHERAL STENT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZILVER PTX DRUG ELUTING PERIPHERAL STENT is 3,075 days. Of this time, 2,180 days occurred during the testing phase of the regulatory review period, while 895 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* June 16, 2004. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on July 28, 2004. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on June 16, 2004, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* June 4, 2010. The applicant claims April 1, 2009, as the date the premarket approval application (PMA) for ZILVER PTX DRUG ELUTING PERIPHERAL STENT (PMA P100022) was initially submitted. However, FDA records indicate that PMA P100022 was submitted in full on June 4, 2010.

3. *The date the application was approved:* November 14, 2012. The applicant claims that the PMA P100022 was approved on November 15, 2012. However, FDA records indicate that PMA P100022 was approved on November 14, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,826 days or 751 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14357 Filed 6–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–E–2585]

Determination of Regulatory Review Period for Purposes of Patent Extension; ORBACTIV

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ORBACTIV and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 16, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 14, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–E–2585 for "Determination of Regulatory Review Period for Purposes of Patent Extension; ORBACTIV." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product ORBACTIV (oritavancin diphosphate). ORBACTIV is indicated for treatment of adult patients with acute bacterial skin and skin structure infections caused or suspected to be caused by susceptible isolates of designated Gram-positive microorganisms. Subsequent to this approval, the USPTO received a patent term restoration application for ORBACTIV (U.S. Patent No. 5,840,684) from Eli Lilly and Co., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ORBACTIV represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ORBACTIV is 6,539 days. Of this time, 6,295 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* September 12, 1996. The applicant claims September 11, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 12, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 6, 2013. FDA has verified the applicant's claim that the new drug application (NDA) for ORBACTIV (NDA 206334) was initially submitted on December 6, 2013.

3. *The date the application was approved:* August 6, 2014. FDA has verified the applicant's claim that NDA 206334 was approved on August 6, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14353 Filed 6–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–4563]

Modified Release Veterinary Parenteral Dosage Forms: Development, Evaluation, and Establishment of Specifications; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidance for industry #238 entitled "Modified Release Veterinary Parenteral Dosage Forms: Development, Evaluation, and Establishment of Specifications." This guidance provides recommendations on the submission of chemistry, manufacturing, and controls and pharmacokinetic information, as well as procedures to follow, to support the approval of modified release parenteral drug products intended for use in veterinary species. This guidance is applicable to both new animal drug applications and abbreviated new animal drug application products.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–N–4563 for "Modified Release Veterinary Parenteral Dosage Forms: Development, Evaluation, and Establishment of Specifications." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Gregory Hunter, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0675, *Gregory.Hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 2016 (81 FR 2874), FDA published the notice of availability for a draft guidance for industry entitled "Modified Release Veterinary Parenteral Dosage Forms: Development, Evaluation, and Establishment of Specifications," giving interested persons until March 21, 2016, to comment on the draft, and those comments were considered as the guidance was finalized. The guidance announced in this notice finalizes the draft guidance dated January 2016.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Modified Release Veterinary Parenteral Dosage Forms: Development, Evaluation, and Establishment of Specifications." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032; the collections of information in section 512(n)(1) of the FD&C Act (21 U.S.C. 360k) have been approved under OMB control number 0910–0669.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14355 Filed 6–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–0677]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZILVER PTX DRUG ELUTING PERIPHERAL STENT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZILVER PTX DRUG ELUTING PERIPHERAL STENT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application by Cook Medical Technologies, LLC, to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 16, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 14, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–E–0677 for "Determination of Regulatory Review Period for Purposes of Patent Extension; ZILVER PTX DRUG ELUTING PERIPHERAL STENT." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device ZILVER PTX DRUG ELUTING PERIPHERAL STENT. ZILVER PTX DRUG ELUTING PERIPHERAL STENT is indicated for improving luminal diameter for the treatment of *de novo* or restenotic symptomatic lesions in native vascular disease of the above-the-knee femoropopliteal arteries having reference vessel diameters from 4 millimeters (mm) to 9 mm and total lesion lengths up to 140 mm per limb and 280 mm per patient. Subsequent to this approval, the USPTO received a patent term restoration application for ZILVER PTX DRUG ELUTING PERIPHERAL STENT (U.S. Patent No. 6,299,604) from Cook Medical Technologies, LLC, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 25, 2014, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of ZILVER PTX DRUG ELUTING PERIPHERAL STENT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZILVER PTX DRUG ELUTING PERIPHERAL STENT is 3,075 days. Of this time, 2,180 days occurred during the testing phase of the regulatory review period, while 895 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* June 16, 2004. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective was June 16, 2004.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* June 4, 2010. FDA has verified the applicant's claim that the premarket approval application (PMA) for ZILVER PTX DRUG ELUTING PERIPHERAL STENT (PMA P100022) was initially submitted June 4, 2010.

3. *The date the application was approved:* November 14, 2012. FDA has verified the applicant's claim that PMA P100022 was approved on November 14, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14356 Filed 6–16–16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1486]

Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection of Zika Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of two Emergency Use Authorizations (EUAs) (the Authorizations) for two in vitro diagnostic devices for detection of Zika virus in response to the Zika virus outbreak in the Americas. FDA issued these Authorizations under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as requested by Focus Diagnostics, Inc., and altona Diagnostics GmbH. The Authorizations contain,

among other things, conditions on the emergency use of the authorized in vitro diagnostic devices. The Authorizations follow the February 26, 2016, determination by the Department of Health and Human Services (HHS) Secretary that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves Zika virus. On the basis of such determination, the HHS Secretary declared on February 26, 2016, that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection subject to the terms of any authorization issued under the FD&C Act. The Authorizations, which include explanations of the reasons for issuance, are reprinted in this document.

DATES: The Authorization for Focus Diagnostics, Inc., is effective as of April 28, 2016, and the Authorization for altona Diagnostics GmbH is effective as of May 13, 2016.

ADDRESSES: Submit written requests for single copies of the EUAs to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorizations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: Carmen Maher, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4347, Silver Spring, MD 20993–0002, 301–796–8510.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces of attack with a biological, chemical, radiological, or nuclear agent or agents; (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), or 515 of the FD&C Act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [1] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Requests for In Vitro Diagnostic Devices for Detection of Zika Virus

On February 26, 2016, the Secretary of HHS determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves Zika virus. On February 26, 2016, under section 564(b)(1) of the FD&C Act, and on the basis of such determination, the

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[1] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the determination and declaration of the Secretary was published in the **Federal Register** on March 2, 2016 (81 FR 10878). On April 26, 2016, Focus Diagnostics, Inc., requested, and on April 28, 2016, FDA issued, an EUA for the Zika Virus RNA Qualitative Real-Time RT–PCR test, subject to the terms of the Authorization. On May 11, 2016, altona Diagnostics GmbH requested, and on May 13, 2016, FDA issued, an EUA for the RealStar® Zika Virus RT–PCR Kit U.S., subject to the terms of the Authorization.

III. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the Internet at *http://www.regulations.gov.*

IV. The Authorizations

Having concluded that the criteria for issuance of the Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of two in vitro diagnostic devices for detection of Zika virus subject to the terms of the Authorizations. The Authorizations in their entirety (not including the authorized versions of the fact sheets and other written materials) follow and provide explanations of the reasons for their issuance, as required by section 564(h)(1) of the FD&C Act.

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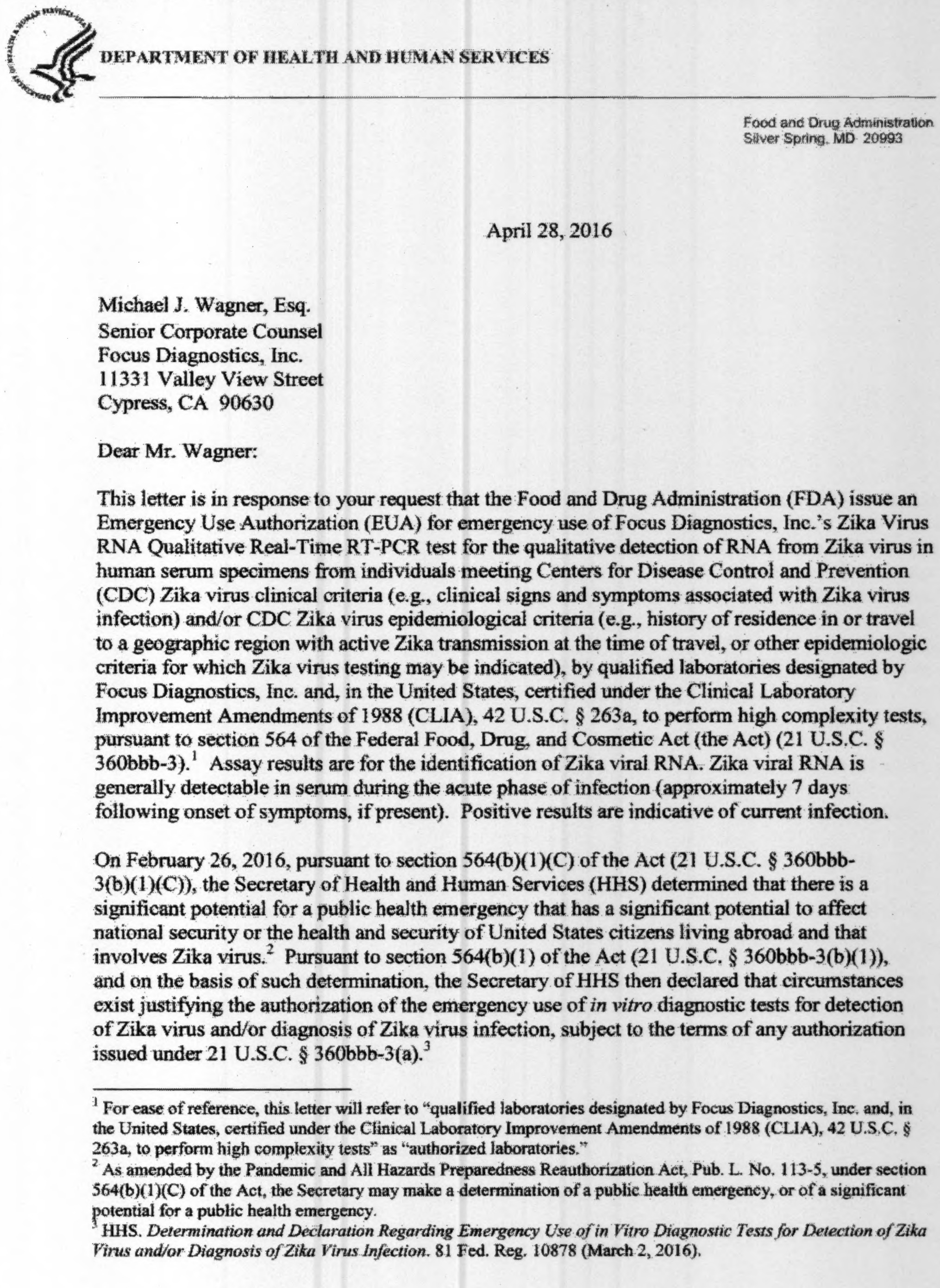

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

April 28, 2016

Michael J. Wagner, Esq.
Senior Corporate Counsel
Focus Diagnostics, Inc.
11331 Valley View Street
Cypress, CA 90630

Dear Mr. Wagner:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of Focus Diagnostics, Inc.'s Zika Virus RNA Qualitative Real-Time RT-PCR test for the qualitative detection of RNA from Zika virus in human serum specimens from individuals meeting Centers for Disease Control and Prevention (CDC) Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated), by qualified laboratories designated by Focus Diagnostics, Inc. and, in the United States, certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. § 263a, to perform high complexity tests, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).[1] Assay results are for the identification of Zika viral RNA. Zika viral RNA is generally detectable in serum during the acute phase of infection (approximately 7 days following onset of symptoms, if present). Positive results are indicative of current infection.

On February 26, 2016, pursuant to section 564(b)(1)(C) of the Act (21 U.S.C. § 360bbb-3(b)(1)(C)), the Secretary of Health and Human Services (HHS) determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Zika virus.[2] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS then declared that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[3]

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[1] For ease of reference, this letter will refer to "qualified laboratories designated by Focus Diagnostics, Inc. and, in the United States, certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. § 263a, to perform high complexity tests" as "authorized laboratories."

[2] As amended by the Pandemic and All Hazards Preparedness Reauthorization Act, Pub. L. No. 113-5, under section 564(b)(1)(C) of the Act, the Secretary may make a determination of a public health emergency, or of a significant potential for a public health emergency.

[3] HHS. *Determination and Declaration Regarding Emergency Use of in Vitro Diagnostic Tests for Detection of Zika Virus and/or Diagnosis of Zika Virus Infection*. 81 Fed. Reg. 10878 (March 2, 2016).

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the Zika Virus RNA Qualitative Real-Time RT-PCR test (as described in the Scope of Authorization section of this letter (Section II)) in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated) (as described in the Scope of Authorization section of this letter (Section II)) for the detection of Zika virus infection by authorized laboratories, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the Zika Virus RNA Qualitative Real-Time RT-PCR for the detection of Zika virus and diagnosis of Zika virus infection in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Zika virus can cause Zika virus infection, a serious or life-threatening disease or condition to humans infected with the virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Zika Virus RNA Qualitative Real-Time RT-PCR, when used with the specified instrument and in accordance with the Scope of Authorization, may be effective in detecting Zika virus and diagnosing Zika virus infection, and that the known and potential benefits of the Zika Virus RNA Qualitative Real-Time RT-PCR for detecting Zika virus and diagnosing Zika virus infection outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the Zika Virus RNA Qualitative Real-Time RT-PCR for detecting Zika virus and diagnosing Zika virus infection.[4]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR by authorized laboratories for the detection of RNA from Zika virus and diagnosis of Zika virus infection in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated).

The Authorized Zika Virus RNA Qualitative Real-Time RT-PCR

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[4] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

Focus Diagnostics, Inc.'s Zika Virus RNA Qualitative Real-Time RT-PCR is a real-time reverse transcriptase PCR (rRT-PCR) for the *in vitro* qualitative detection of Zika virus RNA in serum specimens collected from individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated). The Zika Virus RNA Qualitative Real-Time RT-PCR can also be used with other authorized specimen types. The test procedure consists of nucleic acid extraction using the Roche MagNA Pure LC Total Nucleic Acid Isolation Large Volume Kit on the Roche MagNA Pure LC System, or other authorized extraction method, followed by rRT-PCR on the Applied Biosystems (ABI) 7500 Real-Time PCR System or other authorized instruments, using the Life Technologies SuperScript® III Platinum® One-Step Quantitative RT-PCR System, or other authorized PCR enzyme Kits.

The Zika Virus RNA Qualitative Real-Time RT-PCR includes primers and dual-labeled hydrolysis (Taqman®) probes targeting two separate nucleotide sequences within the Zika virus genome to be used in the *in vitro* qualitative detection of Zika virus RNA isolated from human serum and any other authorized specimens. The purified nucleic acids are first reverse transcribed into cDNAs. In the process, the probes anneal to the specific target sequences located between the respective forward and reverse primers. During the extension phase of the PCR cycle, the 5' nuclease activity of Taq polymerase degrades the probes, causing the reporter dyes to separate from the quencher dyes, generating fluorescent signals. With each cycle, additional reporter dye molecules are cleaved from their respective probes, increasing the fluorescence intensity.

The Zika Virus RNA Qualitative Real-Time RT-PCR kit includes the following materials:

- Zika Virus RNA Qualitative Real-Time RT-PCR Primer and Probe sets for the detection of Zika virus and the Internal Control
    - ZV RTPCR Mix 1 (contains SuperScript® III reaction buffer, primers, and probes for the "M" region of the Zika virus genome and the Internal Control)
    - ZV RTPCR Mix 2 (contains SuperScript® III reaction buffer, primers, and probes for the "env" region of the Zika virus genome and the Internal Control)

The Zika Virus RNA Qualitative Real-Time RT-PCR requires the following control materials; all assay controls listed below should be run concurrently with all test samples and must generate expected results in order for a test to be considered valid:

- **Zika Virus RNA Qualitative Real-Time RT-PCR Negative Control**
    - Normal human serum, no detectable Zika virus RNA
    - One included in each batch of specimen extraction to monitor Zika virus contamination

- **Zika Virus RNA Qualitative Real-Time RT-PCR Positive Control**
    - Zika virus strain FLR diluted in normal human serum
    - One included in each batch of specimen extraction to monitor nucleic acid isolation and detection of Zika virus RNA

- **Zika Virus RNA Qualitative Real-Time RT-PCR Internal Control**
    - DNA target included in each specimen, Positive Control, and Negative Control
    - Consists of a portion of the *Arabidopsis thaliana* genome, added to the lysis reagent provided in the MagNA Pure LC Total Nucleic Acid Large Volume Isolation Kit
    - Ensures the absence of non-specific PCR inhibition of a sample

The above described Zika Virus RNA Qualitative Real-Time RT-PCR, when labeled consistently with the labeling authorized by FDA entitled "Zika Virus RNA Qualitative Real-Time RT-PCR Instructions for Use" (available at http://www.fda.gov/MedicalDevices/%20Safety/EmergencySituations/ucm161496.htm), which may be revised by Focus Diagnostics, Inc. in consultation with FDA, is authorized to be distributed to and used by authorized laboratories under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described Zika Virus RNA Qualitative Real-Time RT-PCR is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care providers, pregnant women, and other patients:

- Fact Sheet for Health Care Providers: Interpreting Zika Virus RNA Qualitative Real-Time RT-PCR Test Results
- Fact Sheet for Pregnant Women: Understanding Results from the Zika Virus RNA Qualitative Real-Time RT-PCR Test
- Fact Sheet for Patients: Understanding Results from the Zika Virus RNA Qualitative Real-Time RT-PCR Test

As described in Section IV below, Focus Diagnostics, Inc. is also authorized to make available additional information relating to the emergency use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR in the specified population, when used for detection of Zika virus and to diagnose Zika virus infection and used consistently with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized Zika Virus RNA Qualitative Real-Time RT-PCR may be effective in the detection of Zika virus and diagnosis of Zika virus infection, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the authorized Zika Virus RNA Qualitative Real-Time RT-PCR, when used for detection of Zika virus and to diagnose Zika virus infection in the specified population (as described in the Scope of Authorization of this letter (Section II)), meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the Zika Virus RNA Qualitative Real-Time RT-PCR described above is authorized to detect Zika virus and diagnose Zika virus infection in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to geographic regions during a period of active Zika virus transmissions at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated).

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the Zika Virus RNA Qualitative Real-Time RT-PCR during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the Zika Virus RNA Qualitative Real-Time RT-PCR.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Focus Diagnostics, Inc.

A. Focus Diagnostics, Inc. will distribute the authorized Zika Virus RNA Qualitative Real-Time RT-PCR with the authorized labeling, as may be revised by Focus Diagnostics, Inc. in consultation with FDA, only to authorized laboratories.

B. Focus Diagnostics, Inc. will provide to authorized laboratories the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Health Care Providers, the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Pregnant Women, and the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact

Sheet for Patients.

C. Focus Diagnostics, Inc. will make available on its website the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Health Care Providers, the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Pregnant Women, and the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Patients.

D. Focus Diagnostics, Inc. will inform authorized laboratories and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. Focus Diagnostics, Inc. will ensure that authorized laboratories using the authorized Zika Virus RNA Qualitative Real-Time RT-PCR have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.[5]

F. Focus Diagnostics, Inc. will track adverse events and report to FDA under 21 CFR Part 803, but can submit reports to FDA in paper form.

G. Through a process of inventory control, Focus Diagnostics, Inc. will maintain records of device usage.

H. Focus Diagnostics, Inc. will collect information on the performance of the test. Focus Diagnostics, Inc. will report to FDA any suspected occurrence of false positive and false negative results and significant deviations from the established performance characteristics of the test of which Focus Diagnostics, Inc. becomes aware.

I. Focus Diagnostics, Inc. is authorized to make available additional information relating to the emergency use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR that is consistent with, and does not exceed, the terms of this letter of authorization.

J. Focus Diagnostics, Inc. may request changes to the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Health Care Providers, the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Pregnant Women, and the authorized Zika Virus RNA Qualitative Real-Time RT-PCR Fact Sheet for Patients. Such requests will be made by Focus Diagnostics, Inc. in consultation with FDA, and require concurrence of, FDA.

K. Focus Diagnostics, Inc. may request the addition of other real-time PCR instruments for use with the authorized Zika Virus RNA Qualitative Real-Time RT-PCR. Such requests will be made by Focus Diagnostics, Inc. in consultation with, and require concurrence of, FDA.

L. Focus Diagnostics, Inc. may request the addition of other extraction methods for use with the authorized Zika Virus RNA Qualitative Real-Time RT-PCR. Such requests will be made by Focus Diagnostics, Inc. in consultation with, and require concurrence of, FDA.

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[5] For questions related to reporting Zika test results to relevant public health authorities, it is recommended that Focus Diagnostics, Inc. and authorized laboratories consult with the applicable state or territory health department(s) and/or CDC. According to CDC, Zika is a nationally notifiable condition. http://www.cdc.gov/zika/.

M. Focus Diagnostics, Inc. may request the addition of other specimen types for use with the authorized Zika Virus RNA Qualitative Real-Time RT-PCR. Such requests will be made by Focus Diagnostics, Inc. in consultation with, and require concurrence of, FDA.

N. Focus Diagnostics, Inc. will assess traceability[6] of the Zika Virus RNA Qualitative Real-Time RT-PCR with the interim WHO Zika reference standard when the reference material becomes available. After submission to FDA and FDA's review of and concurrence with the data, Focus Diagnostics, Inc. will update its labeling to reflect the additional testing.

Authorized Laboratories

O. Authorized laboratories will include with reports of the results of the Zika Virus RNA Qualitative Real-Time RT-PCR the authorized Fact Sheet for Health Care Providers, the authorized Fact Sheet for Pregnant Women, and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

P. Authorized laboratories will perform the Zika Virus RNA Qualitative Real-Time RT-PCR on the Applied Biosystems (ABI) 7500 Real-Time PCR Instrument or other authorized instruments.

Q. Authorized laboratories will have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.[7]

R. Authorized laboratories will collect information on the performance of the test and report to Focus Diagnostics, Inc., any suspected occurrence of false positive or false negative results of which they become aware.

S. All laboratory personnel using the test should be appropriately trained in RT-PCR techniques and use appropriate laboratory and personal protective equipment when handling this kit.

Focus Diagnostics, Inc. and Authorized Laboratories

T. Focus Diagnostics, Inc. and authorized laboratories will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

U. All advertising and promotional descriptive printed matter relating to the use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

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[6] Traceability refers to tracing analytical sensitivity/reactivity back to the interim WHO Zika reference material.

[7] For questions related to reporting Zika test results to relevant public health authorities, it is recommended that Focus Diagnostics, Inc. and authorized laboratories consult with the applicable state or territory health department(s) and/or CDC. According to CDC, Zika is a nationally notifiable condition. http://www.cdc.gov/zika/.

V. All advertising and promotional descriptive printed matter relating to the use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an EUA for use by authorized laboratories;
- This test has been authorized only for the detection of RNA from Zika virus and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR may represent or suggest that this test is safe or effective for the diagnosis of Zika virus infection.

The emergency use of the authorized Zika Virus RNA Qualitative Real-Time RT-PCR as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

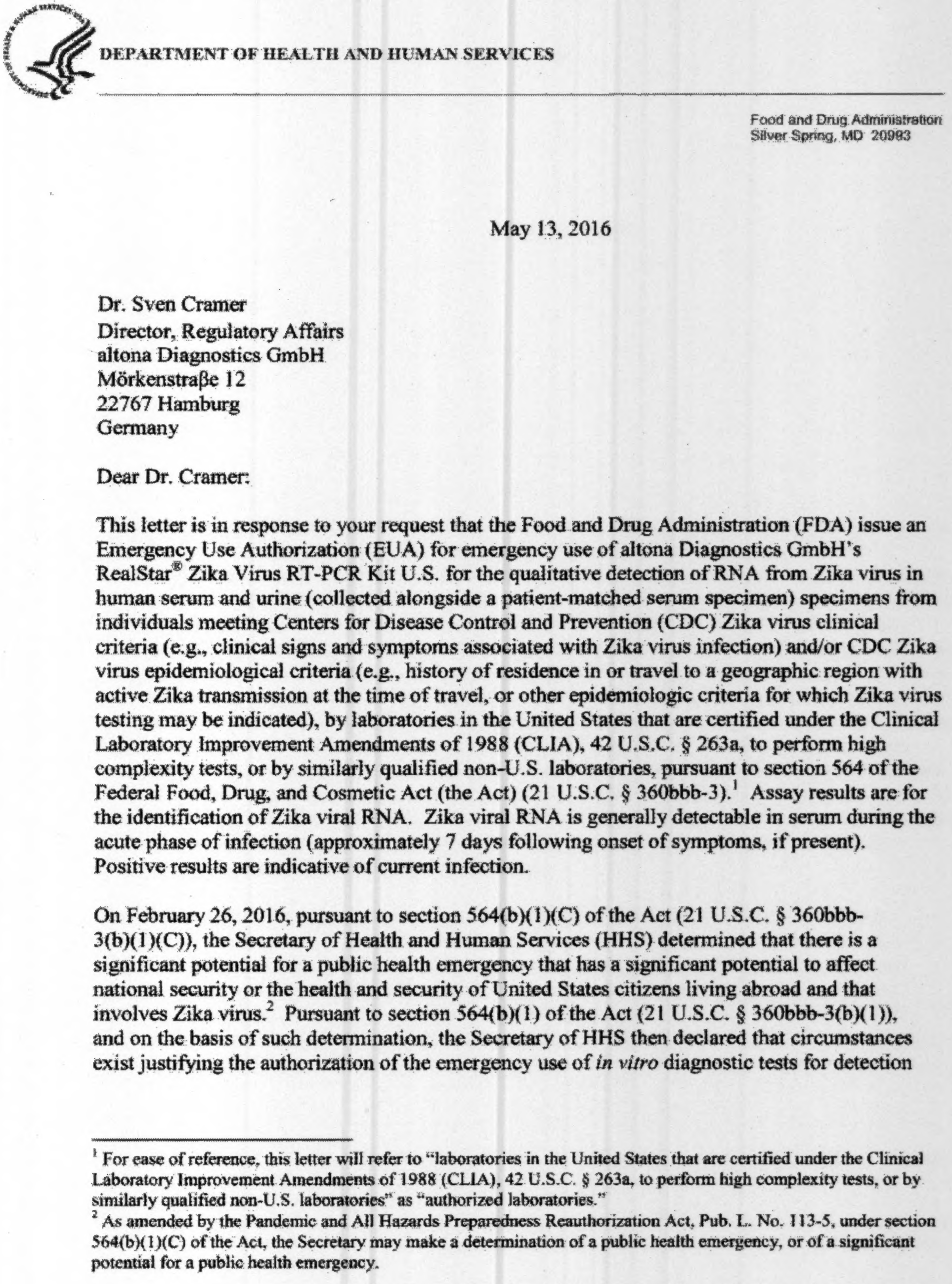
V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Robert M. Califf, M.D.
Commissioner of Food and Drugs

Enclosures



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

May 13, 2016

Dr. Sven Cramer
Director, Regulatory Affairs
altona Diagnostics GmbH
Mörkenstraβe 12
22767 Hamburg
Germany

Dear Dr. Cramer:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of altona Diagnostics GmbH's RealStar® Zika Virus RT-PCR Kit U.S. for the qualitative detection of RNA from Zika virus in human serum and urine (collected alongside a patient-matched serum specimen) specimens from individuals meeting Centers for Disease Control and Prevention (CDC) Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated), by laboratories in the United States that are certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. § 263a, to perform high complexity tests, or by similarly qualified non-U.S. laboratories, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).[1] Assay results are for the identification of Zika viral RNA. Zika viral RNA is generally detectable in serum during the acute phase of infection (approximately 7 days following onset of symptoms, if present). Positive results are indicative of current infection.

On February 26, 2016, pursuant to section 564(b)(1)(C) of the Act (21 U.S.C. § 360bbb-3(b)(1)(C)), the Secretary of Health and Human Services (HHS) determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Zika virus.[2] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS then declared that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[3]

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[1] For ease of reference, this letter will refer to "laboratories in the United States that are certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. § 263a, to perform high complexity tests, or by similarly qualified non-U.S. laboratories" as "authorized laboratories."

[2] As amended by the Pandemic and All Hazards Preparedness Reauthorization Act, Pub. L. No. 113-5, under section 564(b)(1)(C) of the Act, the Secretary may make a determination of a public health emergency, or of a significant potential for a public health emergency.

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the RealStar® Zika Virus RT-PCR Kit U.S. (as described in the Scope of Authorization section of this letter (Section II)) in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated) (as described in the Scope of Authorization section of this letter (Section II)) for the detection of Zika virus infection by authorized laboratories, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of RealStar® Zika Virus RT-PCR Kit U.S. for the detection of Zika virus and diagnosis of Zika virus infection in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Zika virus can cause Zika virus infection, a serious or life-threatening disease or condition to humans infected with the virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the RealStar® Zika Virus RT-PCR Kit U.S., when used with the specified instrument and in accordance with the Scope of Authorization, may be effective in detecting Zika virus and diagnosing Zika virus infection, and that the known and potential benefits of the RealStar® Zika Virus RT-PCR Kit U.S. for detecting Zika virus and diagnosing Zika virus infection outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the RealStar® Zika Virus RT-PCR Kit U.S. for detecting Zika virus and diagnosing Zika virus infection.[4]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. by authorized laboratories for the detection of RNA from Zika virus and diagnosis of Zika virus infection in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated).

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[3] HHS. *Determination and Declaration Regarding Emergency Use of in Vitro Diagnostic Tests for Detection of Zika Virus and/or Diagnosis of Zika Virus Infection*. 81 Fed. Reg. 10878 (March 2, 2016).

[4] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

The Authorized RealStar® Zika Virus RT-PCR Kit U.S.

altona Diagnostics GmbH's RealStar® Zika Virus RT-PCR Kit U.S. is a real-time reverse transcriptase PCR (rRT-PCR) for the *in vitro* qualitative detection of Zika virus RNA in serum and urine (collected alongside a patient-matched serum specimen) specimens collected from individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated). The RealStar® Zika Virus RT-PCR Kit U.S. can also be used with other authorized specimen types. The test procedure consists of nucleic acid extraction using the Qiagen QIAamp® Viral RNA Mini kit, or other authorized extraction method, followed by rRT-PCR on the ABI Prism® 7500 SDS instrument, the ABI Prism® 7500 Fast SDS instrument, the LightCycler® 480 Instrument II, the CFX96™ Real-Time PCR Detection System, the CFX96™ Deep Well Real-Time PCR Detection System, the Rotor-Gene® 6000 instrument, the Rotor-Gene® Q 5/6 plex/MDx Platform or other authorized instruments.

The RealStar® Zika Virus RT-PCR Kit U.S. includes a primer and dual-labeled hydrolysis (Taqman®) probe set targeting a nucleotide sequence within the Zika virus genome to be used in the *in vitro* qualitative detection of Zika virus RNA isolated from human serum, urine and any other authorized specimens. The purified nucleic acids are first reverse transcribed into cDNAs. In the process, the probes anneal to the specific target sequences located between the respective forward and reverse primers. During the extension phase of the PCR cycle, the 5' nuclease activity of Taq polymerase degrades the probe, causing the reporter dye to separate from the quencher dye, generating fluorescent signals. With each cycle, additional reporter dye molecules are cleaved from their respective probes, increasing the fluorescence intensity.

The RealStar® Zika Virus RT-PCR Kit U.S. includes the following materials:

- RealStar® Zika Virus RT-PCR Kit U.S. Primer and Probe sets for the detection of Zika virus and the Internal Control
  - Master A
  - Master B

The RealStar® Zika Virus RT-PCR Kit U.S. requires the following control materials; all assay controls listed below should be run concurrently with all test samples and must generate expected results in order for a test to be considered valid:

- RealStar® Zika Virus RT-PCR Kit U.S. Negative Control
  - PCR grade water
  - A negative control is included in each batch of specimen extractions to monitor Zika virus contamination

- RealStar® Zika Virus RT-PCR Kit U.S. Positive Control
  - Zika virus strain *in vitro* transcript which contains the target sequence used by the RealStar® Zika Virus RT-PCR Kit U.S.
  - A positive control is included in each batch of specimen extractions to

monitor nucleic acid isolation and detection of Zika virus RNA

- RealStar® Zika Virus RT-PCR Kit U.S. Internal Control
    - RNA target included in each specimen, Positive Control, and Negative Control
    - Consists of an artificial RNA molecule with no homologies to any other known sequences, added to the nucleic acid extraction procedure
    - Ensures the absence of non-specific PCR inhibition of a sample

The above described RealStar® Zika Virus RT-PCR Kit U.S., when labeled consistently with the labeling authorized by FDA entitled "RealStar® Zika Virus RT-PCR Kit U.S. Instructions for Use" (available at http://www.fda.gov/MedicalDevices/%20Safety/EmergencySituations/ucm161496.htm), which may be revised by altona Diagnostics GmbH in consultation with FDA, is authorized to be distributed to and used by authorized laboratories under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described RealStar® Zika Virus RT-PCR Kit U.S. is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care providers, pregnant women, and other patients:

- Fact Sheet for Health Care Providers: Interpreting RealStar® Zika Virus RT-PCR Kit U.S. Test Results
- Fact Sheet for Pregnant Women: Understanding Results from the RealStar® Zika Virus RT-PCR Kit U.S.
- Fact Sheet for Patients: Understanding Results from the RealStar® Zika Virus RT-PCR Kit U.S.

As described in Section IV below, altona Diagnostics GmbH is also authorized to make available additional information relating to the emergency use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized RealStar® Zika Virus RT-PCR Kit U.S. in the specified population, when used for detection of Zika virus and to diagnose Zika virus infection and used consistently with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized RealStar® Zika Virus RT-PCR Kit U.S. may be effective in the detection of Zika virus and diagnosis of Zika virus infection, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the authorized RealStar® Zika Virus RT-PCR Kit U.S., when used for detection of Zika virus and to diagnose Zika virus infection in the specified population (as described in the Scope of Authorization of this letter (Section II)), meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the RealStar® Zika Virus RT-PCR Kit U.S. described above is authorized to detect Zika virus and diagnose Zika virus infection in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to geographic regions during a period of active Zika virus transmissions at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated).

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the RealStar® Zika Virus RT-PCR Kit U.S. during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the RealStar® Zika Virus RT-PCR Kit U.S.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

altona Diagnostics GmbH and Its Authorized Distributor(s)

A. altona Diagnostics GmbH and its authorized distributor(s) will distribute the authorized RealStar® Zika Virus RT-PCR Kit U.S. with the authorized labeling, as may be revised by altona Diagnostics GmbH in consultation with FDA, only to authorized laboratories.

B. altona Diagnostics GmbH and its authorized distributor(s) will provide to authorized laboratories the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Health Care Providers, the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Pregnant Women, and the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Patients.

C. altona Diagnostics GmbH and its authorized distributor(s) will make available on their websites the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Health Care Providers, the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Pregnant Women, and the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Patients.

D. altona Diagnostics GmbH and its authorized distributor(s) will inform authorized laboratories and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. altona Diagnostics GmbH and its authorized distributor(s) will ensure that authorized laboratories using the authorized RealStar® Zika Virus RT-PCR Kit U.S. have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.[5]

F. Through a process of inventory control, altona Diagnostics GmbH and its authorized distributor(s) will maintain records of device usage.

G. altona Diagnostics GmbH and its authorized distributor(s) will collect information on the performance of the test. altona Diagnostics GmbH will report to FDA any suspected occurrence of false positive and false negative results and significant deviations from the established performance characteristics of the test of which altona Diagnostics GmbH becomes aware.

H. altona Diagnostics GmbH and its authorized distributor(s) are authorized to make available additional information relating to the emergency use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. that is consistent with, and does not exceed, the terms of this letter of authorization.

altona Diagnostics GmbH

I. altona Diagnostics GmbH will notify FDA of any authorized distributor(s) of the RealStar® Zika Virus RT-PCR Kit U.S., including the name, address, and phone number of any authorized distributor(s).

J. altona Diagnostics GmbH will provide its authorized distributor(s) with a copy of this EUA, and communicate to its authorized distributor(s) any subsequent amendments that might be made to this EUA and its authorized accompanying materials (e.g., fact sheets, instructions for use).

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[5] For questions related to reporting Zika test results to relevant public health authorities, it is recommended that altona Diagnostics GmbH and authorized laboratories consult with the applicable state or territory health department(s). According to CDC, Zika is a nationally notifiable condition. http://www.cdc.gov/zika/.

K. altona Diagnostics GmbH may request changes to the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Health Care Providers, the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Pregnant Women, and the authorized RealStar® Zika Virus RT-PCR Kit U.S. Fact Sheet for Patients. Such requests will be made by altona Diagnostics GmbH in consultation with, and require concurrence of, FDA.

L. altona Diagnostics GmbH may request the addition of other real-time PCR instruments for use with the authorized RealStar® Zika Virus RT-PCR Kit U.S. Such requests will be made by altona Diagnostics GmbH in consultation with, and require concurrence of, FDA.

M. altona Diagnostics GmbH may request the addition of other extraction methods for use with the authorized RealStar® Zika Virus RT-PCR Kit U.S. Such requests will be made by altona Diagnostics GmbH in consultation with, and require concurrence of, FDA.

N. altona Diagnostics GmbH may request the addition of other specimen types for use with the authorized RealStar® Zika Virus RT-PCR Kit U.S. Such requests will be made by altona Diagnostics GmbH in consultation with, and require concurrence of, FDA.

O. altona Diagnostics GmbH will assess traceability[6] of the RealStar® Zika Virus RT-PCR Kit U.S. with a FDA-recommended reference material. After submission to FDA and FDA's review of and concurrence with the data, altona Diagnostics GmbH will update its labeling to reflect the additional testing.

P. altona Diagnostics GmbH will track adverse events and report to FDA under 21 CFR Part 803.

Authorized Laboratories

Q. Authorized laboratories will include with reports of the results of the RealStar® Zika Virus RT-PCR Kit U.S. the authorized Fact Sheet for Health Care Providers, the authorized Fact Sheet for Pregnant Women, and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

R. Authorized laboratories will perform the RealStar® Zika Virus RT-PCR Kit U.S. on the ABI Prism® 7500 SDS instrument, the ABI Prism® 7500 Fast SDS instrument, the LightCycler® 480 Instrument II, the CFX96™ Real-Time PCR Detection System, the CFX96™ Deep Well Real-Time PCR Detection System, the Rotor-Gene® 6000 instrument, the Rotor-Gene® Q 5/6 plex/MDx Platform or other authorized instruments.

S. Authorized laboratories will have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.[7]

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[6] Traceability refers to tracing analytical sensitivity/reactivity back to a FDA recommended reference material.

[7] For questions related to reporting Zika test results to relevant public health authorities, it is recommended that altona Diagnostics GmbH and authorized laboratories consult with the applicable state or territory health department(s). According to CDC, Zika is a nationally notifiable condition. http://www.cdc.gov/zika/.

T. Authorized laboratories will collect information on the performance of the test and report to altona Diagnostics GmbH, any suspected occurrence of false positive or false negative results of which they become aware.

U. All laboratory personnel using the test should be appropriately trained in RT-PCR techniques and use appropriate laboratory and personal protective equipment when handling this kit.

altona Diagnostics GmbH, Its Authorized Distributor(s) and Authorized Laboratories

V. altona Diagnostics GmbH, its authorized distributor(s) and authorized laboratories, will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

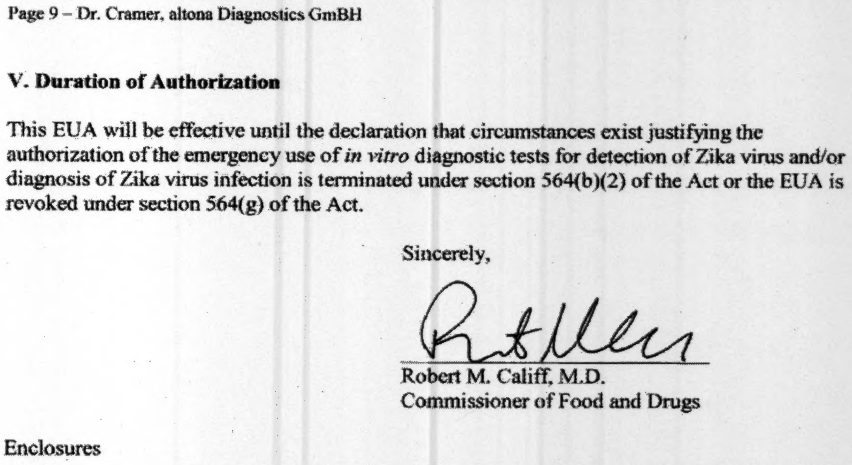
W. All advertising and promotional descriptive printed matter relating to the use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

X. All advertising and promotional descriptive printed matter relating to the use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an EUA for use by authorized laboratories;
- This test has been authorized only for the detection of RNA from Zika virus and diagnosis of Zika virus infection, and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. may represent or suggest that this test is safe or effective for the diagnosis of Zika virus infection.

The emergency use of the authorized RealStar® Zika Virus RT-PCR Kit U.S. as described in this letter of authorization must comply with the conditions and all other terms of this authorization.



Page 9 – Dr. Cramer, altona Diagnostics GmBH

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Robert M. Califf, M.D.
Commissioner of Food and Drugs

Enclosures

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14380 Filed 6–16–16; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Bioequivalence Recommendations; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products" that explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 16, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for "Product-Specific Bioequivalence Recommendations; Draft and Revised Draft Guidances for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Xiaoqiu Tang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993–0002, 301–796–5850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products" that explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on FDA's Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final recommendations or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** on April 15, 2016 (81 FR 22283). This notice announces draft product-specific recommendations, either new or revised, that are posted on FDA's Web site.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing the availability of a new draft guidance for industry on product-specific BE recommendations for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC BE RECOMMENDATIONS FOR DRUG PRODUCTS

Amcinonide
Cariprazine hydrochloride
Cobimetinib fumarate
Empagliflozin; Metformin hydrochloride
Erythromycin ethylsuccinate
Everolimus
Flibanserin
Fluocinonide (multiple reference listed drugs)
Hydrocortisone
Lesinurad
Meloxicam
Methylergonovine maleate
Ombitasvir; paritaprevir; ritonavir
Prednicarbate
Propofol
Pseudoephedrine hydrochloride
Selexipag
Tacrolimus

III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing the availability of a revised draft guidance for industry on product-specific BE recommendations for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC BE RECOMMENDATIONS FOR DRUG PRODUCTS

Acetaminophen; hydrocodone bitartrate
Albuterol sulfate
Azelastine hydrochloride; Fluticasone propionate
Benzoyl peroxide; Clindamycin phosphate
Dexamethasone; Tobramycin (multiple reference listed drugs)
Lansoprazole
Loteprednol Etabonate
Loteprednol Etabonate; Tobramycin Ophthalmic
Mesalamine (multiple reference listed drugs)
Methylphenidate
Morphine sulfate
Paroxetine hydrochloride
Pomalidomide
Prednisolone Acetate
Rimexolone

For a complete history of previously published **Federal Register** notices related to product-specific BE recommendations, go to *http://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14351 Filed 6–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1490]

Quality Attribute Considerations for Chewable Tablets; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Quality Attribute Considerations for Chewable Tablets." This guidance describes the

Agency's thinking on the critical quality attributes that should be assessed when developing a chewable tablet dosage form and recommends that the selected acceptance criteria be appropriate and meaningful indicators of product performance throughout the shelf life of the product.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 16, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1490 for "Quality Attribute Considerations for Chewable Tablets." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Nallaperumal Chidambaram, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3112, Silver Spring, MD 20993–0002, 301–796–1339.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Quality Attribute Considerations for Chewable Tablets." Chewable tablets are an immediate release oral dosage form intended to be chewed and then swallowed by the patient, rather than swallowed whole. They should be designed to have a pleasant taste and be easily chewed and swallowed. Chewable tablets should be safe and easy to use in a diverse patient population, pediatric, adults, or elderly patients, who are unable or unwilling to swallow intact tablets due to the size of the tablet or difficulty with swallowing. In addition, certain tablets must be chewed before swallowing to avoid choking and to ensure the release of the active ingredient. The availability of safe, easy-to-use dosage forms is important in clinical practice, and chewable tablet formulations are available as both over-the-counter and prescription drug products.

A review of numerous applications for chewable tablet drug products revealed that in certain cases, critical quality attributes such as hardness, disintegration, and dissolution were not given as much consideration as may have been warranted. This draft guidance describes the critical quality attributes that should be assessed when developing a chewable tablet dosage form. No single quality characteristic should be considered sufficient to control the performance of a chewable tablet. Instead, the goal should be to develop the proper combination of these attributes to ensure the performance of the chewable tablet for its intended use.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Quality Attribute Considerations for Chewable Tablets. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in investigational new drug applications is approved under OMB control number 0910–0014; the collection of information (including prescription drug labeling) in new drug applications and abbreviated new drug applications, as well as supplements to these applications, is approved under OMB control number 0910–0001; the collection of biologics license applications is approved under OMB control number 0910–0338; and the format and content of prescription drug labeling is approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14354 Filed 6–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0717]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaigns

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 18, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0753. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Evaluation of FDA's General Market Youth Tobacco Prevention Campaigns—OMB Control Number 0910–0753—Revision

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health and to reduce tobacco use by minors. Section 1003(d)(2)(D) of the FD&C Act (21 U.S.C. 393(d)(2)(D)) supports the development and implementation of FDA public education campaigns related to tobacco use. Accordingly, FDA is currently developing and implementing youth-targeted public education campaigns to help prevent tobacco use among youth and thereby reduce the public health burden of tobacco. The campaigns feature televised advertisements along with complementary ads on radio, on the Internet, in print, and through other forms of media.

Evaluation is an essential organizational practice in public health and a systematic way to account for and improve public health actions. Comprehensive evaluation of FDA's public education campaigns will be used to document whether the intended audience is aware of and understands campaign messages; and whether campaign exposure influences beliefs about tobacco, susceptibility to tobacco use, and tobacco use behavior. All of the information collected is integral to that evaluation.

FDA is in the process of conducting three studies to evaluate the effectiveness of its youth tobacco prevention campaigns: (1) An outcome evaluation study of its General Market Youth Tobacco Prevention Campaign, (2) an outcome evaluation of the Rural Male Youth Smokeless Tobacco Campaign, and (3) a media tracking survey. The timing of these studies follows the multiple, discrete waves of media advertising planned for the campaigns.

Evaluation of the General Market Youth Tobacco Prevention Campaign

The General Market Youth Tobacco Prevention Campaign targets youth who are at-risk for smoking, or who have experimented with but not progressed to regular smoking. The outcome evaluation of the campaign consists of an initial baseline survey of youth aged 11 to 16 before campaigns launch, followed by a number of longitudinal follow-up surveys of the same youth at approximate 8 month intervals. To date, the baseline and three follow-up surveys have been conducted. A baseline survey was also conducted with the parent or legal guardian of each youth, to collect data on household characteristics and media use. Because the cohort aged over the study period, data have been collected from youth aged 11 to 18. Information has been collected about youth awareness of and exposure to campaign advertisements and about youth knowledge, attitudes, and beliefs related to tobacco use. In addition, the surveys have measured tobacco use susceptibility and current use. Information has been collected on demographic variables including age, sex, race/ethnicity, grade level, and primary language.

Evaluation of the Rural Male Youth Smokeless Tobacco Campaign

Baseline data collection for the Rural Male Youth Smokeless Campaign evaluation will begin in January 2016. The three follow up surveys will begin in August 2016, March 2017, and October 2017. The evaluation of the Rural Male Youth Smokeless Campaign differs from the General Market Campaign evaluation, in that only males in the age range will be considered eligible.

Media Tracking Survey

The media tracking survey consists of assessments of youth aged 13 to 18 conducted periodically during the campaign period. The tracking survey assesses awareness of the campaign and receptivity to campaign messages. These data provide critical evaluation feedback to the campaigns and are conducted with sufficient frequency to match the cyclical patterns of media advertising and variation in exposure to allow for mid-campaign refinements.

All information is being collected through in-person and web-based questionnaires. Youth respondents were recruited from two sources: (1) A probability sample drawn from 90 U.S. media markets gathered using an address-based postal mail sampling of U.S. households for the outcome evaluations, and (2) an Internet panel for the media tracking survey. Participation in the studies is voluntary.

The studies are being conducted in support of the provisions of the Tobacco Control Act, which require FDA to protect the public health and to reduce tobacco use by minors. The information being collected is necessary to inform FDA's efforts towards those goals and to measure the effectiveness and public health impact of the campaigns. Data from the outcome evaluation of the General Market and Rural Male Youth Smokeless campaigns is being used to examine statistical associations between exposure to the campaigns and subsequent changes in specific outcomes of interest, which will include knowledge, attitudes, beliefs, and intentions related to tobacco use, as well as behavioral outcomes including tobacco use. Data from the media tracking survey is being used to estimate awareness of and exposure to the campaigns among youth nationally as well as among youth in geographic areas targeted by the campaign.

FDA requests OMB approval to collect additional information for the purpose of extending the evaluation of FDA's general market youth tobacco prevention campaign. Specifically, FDA requests approval to conduct a fourth follow-up survey with youth who are part of the first longitudinal cohort, and who participated in the baseline and first through third follow-up surveys. Based on earlier response rates, we estimate that 1,607 will participate in this survey, for a total of 6,666 annualized participants (including 5,059 previously approved). At 0.75 hours per survey, this adds 1,205 annualized burden hours to the 3,794 previously approved hours for a total of 5,000 annualized burden hours. Baseline data collection for this cohort, approved for 2,288 participants (1,144 burden hours at 30 minutes per survey) is complete.

FDA also requests approval to develop and survey a second longitudinal cohort which will consist of an entirely new sample of youth, ages 11–16 at baseline. Development of the second cohort will involve screening 17,467 individuals in the general population for a total of 30,880 participants, including 13,413 previously approved. At 10 minutes per screening, this adds 2,970 burden hours to the already approved 2,280 hours for a total of 5,250 annualized burden hours.

We expect this screening to yield 2,667 youth annually who will complete the baseline survey for the new cohort at 45 minutes per survey, resulting in a total of 2,000 burden hours for youth. Three follow up surveys are planned for this cohort. We expect a total of 6,270 participants to complete follow up surveys for a total burden of 4,703 annualized burden hours. As was done with the first cohort, parents of the 2,667 youth will also complete surveys for a total of 6,009 parent surveys including the 3,342 previously approved. At 10 minutes per survey, this adds 453 hours to the previously approved 568 hours for a total of 1,021 annualized burden hours.

FDA also requests approval to extend the media tracking survey. This survey is cross sectional and thus necessitates brief screening prior to data collection. We expect 20,000 participants to complete screener for a total of 60,000 participants (including 40,000 previously approved). At 2 minutes per screener, this adds 600 burden hours to the previously approved 1,200 hours for a total of 1,800 annualized burden hours. We expect the screening process to yield 2,000 participants, for a total of 6,000 including 4,000 previously approved. At 30 minutes per survey, this adds 1,000 burden hours to the already-approved 2,000 for a total of 3,000 annualized burden hours.

FDA also requests approval to extend the time period of the evaluation of the Male Rural Youth Smokeless Campaign. No new burden hours will be required to complete this study. Previously approved burden for the evaluation of the Rural Male Youth Smokeless Campaign include 656 annualized participants (328 annualized burden hours at 30 minutes per questionnaire) for the baseline questionnaire and 1,281 annualized participants (961 annualized burden hours at 0.75 hours per questionnaire).

In the **Federal Register** of February 19, 2016 (81 FR 8511), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Two burden items have been revised since the publication of the 60-day notice. First, number of respondents planned for the General Population Screener and Consent Process has been corrected to annualize the new screening participants over the 3-year extension. Second, the burden per response for the Cohort 2 Youth Baseline has been increased to 45 minutes to better reflect the actual time required for completion as assessed during the previous data collection rounds.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of respondent	Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
General Population	Screener and Consent Process (Youth and Parent).	30,880	1	30,880	0.17 (10 minutes)	5,250
Parent of Youth Baseline Survey Participants.	Parent Baseline Questionnaire	6,009	1	6,009	0.17 (10 minutes)	1,022
Youth Aged 11 to 18 (Experimenters and Non-Triers).	Youth Baseline Questionnaire (Experimenters & Non-Triers).	2,288	1	2,288	0.50 (30 minutes)	1,144
	Youth 1st, 2nd, 3rd, 4th Follow-up Questionnaire (Experimenters and Non-Triers)	6,666	1	6,666	0.75 (45 minutes)	5,000
Youth Aged 13 to 17	Media Tracking Screener	60,000	1	60,000	0.03 (2 minutes)	1,800
	Media Tracking Questionnaires 1st, 2nd, and 3rd	6,000	1	6,000	0.50 (30 minutes)	3,000

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Type of respondent	Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Male Youth Aged 11 to 18 in U.S. Rural Markets (Male Rural Smokeless).	Youth Baseline Questionnaire (Male Rural Smokeless).	656	1	656	0.50 (30 minutes)	328
	Youth 1st, 2nd, 3rd (Male, Rural Smokeless) Follow-up Questionnaire	1,281	1	1,281	0.75 (45 minutes)	961
Cohort 2—Youth Aged 11 to 18	Cohort 2—Youth Baseline Questionnaire.	2,667	1	2,667	0.75 (45 minutes)	2,000
	Cohort 2—Youth 1st, 2nd, 3rd Follow-Up Questionnaire	6,270	1	6,270	0.75 (45 minutes)	4,703
Total				122,717		25,208

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14352 Filed 6–16–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Idaho National Laboratory site in Scoville, Idaho, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

On June 3, 2016, as provided for under 42 U.S.C. 7384*l*(14)(C),the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Idaho National Laboratory (INL) in Scoville, Idaho, and were monitored for external radiation at INL (*e.g.*, having at least one film badge or TLD dosimeter) during the period from March 1, 1970, through December 31, 1974, and were employed for a number of work days aggregating at least 250 work days, occurring either solely under employment during the period from March 1, 1970, through December 31, 1974, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on July 3, 2016, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2016–14327 Filed 6–16–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Lawrence Livermore National Laboratory site in Livermore, California, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 7384q(b). 42 U.S.C. 7384l(14)(C).

On June 3, 2016, as provided for under 42 U.S.C. 73841(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in any area at the Lawrence Livermore National Laboratory in Livermore, California, during the period from January 1, 1974, through December 31, 1989, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on July 3, 2016, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2016–14326 Filed 6–16–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Argonne National Laboratory-West site in Scoville, Idaho, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

On June 3, 2016, as provided for under 42 U.S.C. 7384*l*(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

> All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Argonne National Laboratory-West during the time period from April 10, 1951, through December 31, 1957, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on July 3, 2016, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2016–14328 Filed 6–16–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Public Comments on the Development of the IACC Strategic Plan for Autism Spectrum Disorder (ASD)

SUMMARY: On behalf of the Interagency Autism Coordinating Committee (IACC) (*http://www.iacc.hhs.gov/*), the National Institute of Mental Health (NIMH) Office of Autism Research Coordination (OARC) is seeking public comments to assist the IACC in identifying priorities for the 2016 update of the IACC Strategic Plan for Autism Spectrum Disorder (ASD) (current IACC Strategic Plan can be viewed at *https://iacc.hhs.gov/publications/strategic-plan/2013/*) as required by the Autism Collaboration, Accountability, Research, Education and Support (CARES) Act of 2014 (Pub. L. 113–157).

The IACC is requesting public comments on research, services, and policy issues related to the seven topics addressed by the IACC Strategic Plan: Screening and Diagnosis, Underlying Biology of ASD, Risk Factors, Treatments and Interventions, Services, Lifespan Issues, and Surveillance and Infrastructure.

DATES: Responses to this notice are voluntary and the public comment period will be open from June 15, 2016–July 29, 2016.

ADDRESSES: All comments must be submitted electronically via the web-based form at: *https://iacc.hhs.gov/meetings/public-comments/requests-for-information/2016/strategic-plan.shtml*.

FOR FURTHER INFORMATION CONTACT: Specific questions about this Request for Public Comment should be directed to: *IACCRFI@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The IACC, a federal advisory committee composed of federal and public members, was established under the Combating Autism Act of 2006. The Committee was most recently reauthorized under the Autism CARES Act of 2014. The law requires that the IACC develop a strategic plan for autism research and update the Plan annually. The IACC last provided an update on the progress of the Strategic Plan in 2013. The IACC Strategic Plan is organized around seven questions that are important for people with ASD and their families:

1. When should I be concerned? (Screening and Diagnosis)
2. How can I understand what is happening? (Underlying Biology of ASD)
3. What caused this to happen and can this be prevented? (Risk Factors)
4. Which treatments and interventions will help? (Treatments and Interventions)
5. Where can I turn for services? (Services)
6. What does the future hold, especially for adults? (Lifespan Issues)
7. What other infrastructure and surveillance needs must be met? (Surveillance and Infrastructure)

Submission Information. For each chapter of the IACC Strategic Plan, commenters may provide input on what they consider to be the most important research, services and policy issues and remaining gaps in the subject area covered by that chapter. Please note that the web form will accept a maximum of 1,500 characters (including letters, numbers, punctuation, etc.) per topic area. A valid email address is required for submission, and only one submission per email address will be accepted. If duplicate submissions are received, only one example of such a submission will be included in the final set of comments.

The information that commenters provide will become part of the public record; as such, please do not include any personally identifiable or confidential information in the comments. The web form will provide the option of submitting responses anonymously, or the choice to include a name and/or organization associated with the comment. Comments are subject to redaction in accordance with federal policies. All comments or summaries of comments received will be made publicly available on the IACC Web site (*www.iacc.hhs.gov*) within 90 days of the closing deadline for this notice. Email addresses associated with comments will not be included as part of the public disclosure. After the closing deadline, responses cannot be edited or withdrawn. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information.

Instructions. All comments must be submitted through the Web form at *https://iacc.hhs.gov/meetings/public-comments/requests-for-information/2016/strategic-plan.shtml*. Individuals submitting comments will receive an onscreen confirmation acknowledging receipt of the comment, but commenters will not receive individualized feedback or responses from the IACC. Only one comment per email address will be accepted, and if duplicate comments are received, only one example will be provided to the IACC. For further submission details and requirements please see Submission Information below.

Dated: June 10, 2016.

Susan A. Daniels,

Director, Office of Autism Research Coordination, National Institute of Mental Health.

[FR Doc. 2016–14330 Filed 6–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Cancer Prevention Fellowship Program Fellowship Program and Summer Curriculum Applications (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Annalisa Gnoleba, Public Health Analyst, Cancer Prevention Fellowship Program, 9609 Medical Center Drive, Room 2E–108 Bethesda, Maryland 20892–9776 or call non-toll-free number (240)–276–7146 or Email your request, including your address to: *gnolebaad@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Cancer Prevention Fellowship Program Fellowship Program and Summer Curriculum Applications (NCI), 0925–NEW, EXISTING INFORMATION COLLECTION WITHOUT AN OMB NUMBER, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute, Division of Cancer Prevention, Cancer Prevention Fellowship Program (CPFP) administers a variety of programs and initiatives to recruit post-doctoral educational level individuals into the Intramural and extramural Research Program to facilitate their development into future scientists. CPFP trains post-doctoral fellows through full time fellowships in preparation for research careers in cancer prevention and control. The proposed information collection involves brief online applications completed by applicants to the full time and the summer curriculum programs. Full-time fellowships include: Non-FTE fellowships for U.S. citizens and permanent residents and fellows that are part of the Irish Consortia. These applications are essential to the administration of these training programs as they enable CPFP to determine the eligibility and quality of potential awardees; to assess their potential as future scientists; to determine where mutual research interests exist; and to make decisions regarding which applicants will be proposed and approved for traineeship awards. In each case, completing the application is voluntary, but in order to receive due consideration, the prospective trainee is encouraged to complete all relevant fields. The information is for internal use to make decisions about prospective fellows and students that could benefit from the CPFP program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 400.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Type of respondent	Estimated number of respondents	Estimated number of responses annually per respondent	Estimated total annual burden hours	Estimated total annual burden hours
CPFP Fellowship Application (Attachment 1)	Student Applicants	150	1	1	150
Reference Recommendation Letters (Attachment 3).	Contributor	150	1	1	150
CPFP Summer Curriculum Application (Attachment 2).	Student Applicants	100	1	1	100
Total	....	400	400	....	400

Dated: June 9, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–14335 Filed 6–16–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0053]

Agency Information Collection Activities: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers (CBP Form 6478). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours, there is no change to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 18, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 14120) on March 16, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

OMB Number: 1651–0053.

Form Number: Form 6478.

Abstract: Commercial laboratories seeking accreditation or approval must provide the information specified in 19 CFR 151.12 to Customs and Border Protection (CBP), and Commercial Gaugers seeking CBP approval must provide the information specified under 19 CFR 151.13. This information may be submitted on CBP Form 6478. After the initial approval and/or accreditation, a private company may "extend" its approval and/or accreditation to add facilities by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103–182 (NAFTA Implementation Act), codified at 19 U.S.C. 1499, which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.* CBP Form 6478 is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%206478_0.pdf.*

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours based on updated estimates of the number of applicants and record keepers associated with this information collection. There are no changes to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Applications for Commercial Testing and Approval of Commercial Gaugers:

Estimated Number of Annual Respondents: 8.

Estimated Time per Response: 1.25 hours.

Estimated Total Annual Burden Hours: 10.

Record Keeping Associated with Applications for Commercial Testing and Approval of Commercial Gaugers:

Estimated Number of Respondents: 180.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 180.

Dated: June 14, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–14360 Filed 6–16–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0029]

Privacy Act of 1974; Department of Homeland Security, U.S. Customs and Border Protection–009 Electronic System for Travel Authorization System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the Department of Homeland Security (DHS) proposes to update and reissue the DHS system of records titled, "DHS/U.S. Customs and Border Protection (CBP)–009 Electronic System for Travel Authorization (ESTA) System of Records." This system of records allows

DHS/CBP to collect and maintain records on nonimmigrant aliens seeking to travel to the United States under the Visa Waiver Program and other persons, including U.S. citizens and lawful permanent residents, whose names are provided to DHS as part of a nonimmigrant alien's ESTA application. The system is used to determine whether an applicant is eligible to travel to and enter the United States under the Visa Waiver Program (VWP) by vetting his or her ESTA application information against selected security and law enforcement databases at DHS, including but not limited to TECS (not an acronym) and the Automated Targeting System (ATS). In addition, ATS retains a copy of ESTA application data to identify ESTA applicants who may pose a security risk to the United States. The ATS maintains copies of key elements of certain databases in order to minimize the impact of processing searches on the operational systems and to act as a backup for certain operational systems. DHS may also vet ESTA application information against security and law enforcement databases at other Federal agencies to enhance DHS's ability to determine whether the applicant poses a security risk to the United States and is eligible to travel to and enter the United States under the VWP. The results of this vetting may inform DHS's assessment of whether the applicant's travel poses a law enforcement or security risk and whether the application should be approved.

DHS/CBP is updating this system of records notice, last published on February 23, 2016 (81 FR 8979), to modify the scope of the system of records to reflect that the Secretary of Homeland Security is adding Somalia, Libya, and Yemen to the list of countries of concern for heightened ESTA enhancement questions. DHS/CBP is also updating the categories of records to include these new countries of concerns to the ESTA enhancement questions and an additional data element, the including Global Entry Program Number, to assist DHS/CBP in determining eligibility to travel under the VWP.

DHS/CBP issued a Final Rule to exempt this system of records from certain provisions of the Privacy Act on August 31, 2009 (74 FR 45070). These regulations remain in effect.

DATES: This updated system will be effective June 16, 2016. Although this system is effective June 17, 2016, DHS will accept and consider comments from the public and evaluate the need for any revisions to this notice.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0029 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: John Connors, (202) 344–1610, CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Ave. NW., Washington, DC 20229. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) is updating and reissuing a current DHS system of records titled, "DHS/CBP–009 Electronic System for Travel Authorization (ESTA) System of Records."

In the wake of September 11, 2001, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53. sec. 711 of that Act sought to address the security vulnerabilities associated with Visa Waiver Program (VWP) travelers not being subject to the same degree of screening as other international visitors. As a result, sec. 711 required DHS to develop and implement a fully automated electronic travel authorization system to collect biographical and other information necessary to evaluate the security risks and eligibility of an applicant to travel to the United States under the VWP. The VWP is a travel facilitation program that has evolved to include more robust security standards that are designed to prevent terrorists and other criminal actors from exploiting the program to enter the country.

The Electronic System for Travel Authorization (ESTA) is a web-based system that DHS/CBP developed in 2008 to determine the eligibility of foreign nationals to travel by air or sea to the United States under the VWP. Using the ESTA Web site, applicants submit biographic information and answer questions that permit DHS to determine eligibility for travel under the VWP. DHS/CBP uses the information submitted to ESTA to make a determination regarding whether the applicant is eligible to travel under the VWP, including whether his or her intended travel poses a law enforcement or security risk. DHS/CBP vets the ESTA applicant information against selected security and law enforcement databases, including TECS (DHS/CBP–011 U.S. Customs and Border Protection TECS, 73 FR 77778 (December 19, 2008)) and ATS (DHS/CBP–006 Automated Targeting System, 77 FR 30297 (May 22, 2012)).

The ATS also retains a copy of the ESTA application data to identify ESTA applicants who may pose a security risk to the United States. The ATS maintains copies of key elements of certain databases in order to minimize the impact of processing searches on the operational systems and to act as a backup for certain operational systems. DHS may also vet ESTA application information against security and law enforcement databases at other Federal agencies to enhance DHS's ability to determine whether the applicant poses a security risk to the United States or is otherwise eligible to travel to and enter the United States under the VWP. The results of this vetting may inform DHS's assessment of whether the applicant's travel poses a law enforcement or security risk. The ESTA eligibility determination is made prior to a visitor boarding a carrier en route to the United States.

DHS/CBP is updating this system of records notice, last published on February 17, 2016 (81 FR 8979), to modify the scope of the system of records to reflect that the Secretary of Homeland Security is adding Somalia, Libya, and Yemen to the list of countries of concern subject to the travel-related restriction provided in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 to receive heightened ESTA enhancement questions. DHS/CBP is also updating the categories of records to include these new countries of concerns to the ESTA enhancement questions and an additional data element, the including Global Entry Program Number, to assist DHS/CBP in determining eligibility to travel under the VWP.

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 as part of the Consolidated Appropriations Act of 2016. To meet the requirements of this new law, DHS strengthened the security of the VWP through enhancements to the ESTA application and to the Nonimmigrant Visa Waiver Arrival/Departure Record Form (Form I–94W). The Act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP if the applicant is also a national of, or at any time on or after March 1, 2011 has been present in, Iraq, Syria, a designated state sponsor of terrorism (currently Iran, Sudan, and Syria),[1] or any other country or area of concern as designated by the Secretary of Homeland Security.[2] DHS is updating this SORN to reflect that the Secretary of Homeland Security is adding, with respect to the travel-related restriction only, Somalia, Libya, and Yemen to the list of countries of concern to receive the heightened ESTA enhancement questions. The designation of Somalia, Libya, and Yemen as additional countries of concern will not affect the VWP eligibility of dual-nationals of those countries.

In addition, due to the ongoing national security concerns surrounding foreign fighters exploiting the VWP, DHS/CBP is also updating the categories of records to include an additional data element, the Global Entry Program Number, to assist DHS/CBP in determining eligibility to travel under the VWP. If an ESTA applicant has already been approved for travel under the Global Entry program, DHS has previously determined that the applicant is a low-risk traveler. This previous assessment and continued vetting under the Global Entry Program will provide CBP with valuable information when considering an applicant's ESTA application, including allowing CBP to make better informed determinations when assessing whether an applicant presents a security risk, and when considering an applicant's eligibility for a waiver of VWP ineligibility.

Consistent with DHS's information sharing mission, information stored in the "DHS/CBP–009 Electronic System for Travel Authorization System of Records" may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information stored in ESTA with other Federal security and counterterrorism agencies, as well as on a case-by-case basis to appropriate State, local, tribal, territorial, foreign, or international government agencies. This external sharing takes place after DHS determines that it is consistent with the routine uses set forth in this system of records notice.

Additionally, for ongoing, systematic sharing, DHS completes an information sharing and access agreement with partners to establish the terms and conditions of the sharing, including documenting the need to know, authorized users and uses, and the privacy protections for the data.

DHS previously issued a Final Rule to exempt this system of records from certain provisions of the Privacy Act on August 31, 2009 (74 FR 45070). These regulations remain in effect. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Given the importance of providing privacy protections to international travelers, and because the ESTA application has generally solicited contact information about U.S. persons, DHS always administratively applied the privacy protections and safeguards of the Privacy Act to all international travelers subject to ESTA. The ESTA falls within the mixed system policy and DHS will continue to extend the administrative protections of the Privacy Act to information about travelers and non-travelers whose information is provided to DHS as part of the ESTA application.

Below is the description of the DHS/U.S. Customs and Border Protection–009 Electronic System for Travel Authorization System of Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–009.

SYSTEM NAME:

DHS/CBP–009 Electronic System for Travel Authorization System (ESTA).

SECURITY CLASSIFICATION:

Unclassified. The data may be retained on classified networks but this does not change the nature and character of the data until it is combined with classified information.

SYSTEM LOCATION:

DHS/CBP maintains records at the CBP Headquarters in Washington, DC and field offices. Records are replicated from the operational system and maintained on the DHS unclassified and classified networks.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

1. Persons who seek to enter the United States by air or sea under the VWP; and,
2. Persons, including U.S. Citizens and lawful permanent residents, whose information is provided in response to ESTA application questions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa Waiver Program travelers may seek the required travel authorization by electronically submitting an application consisting of biographical and other data elements via the ESTA Web site. The categories of records in ESTA include:

- Full name (first, middle, and last);
- Other names or aliases, if available;
- Date of birth;

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[1] Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are generally designated pursuant to three laws: sec. 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405); sec. 40 of the Arms Export Control Act (22 U.S.C. 2780); and sec. 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

[2] The Act establishes exceptions to the bar for travel to Iraq, Syria, Iran, and Sudan since March 1, 2011, for individuals determined by the Secretary of Homeland Security to have been present in these countries, "(i) in order to perform military service in the armed forces of a [VWP] program country; or (ii) in order to carry out official duties as a full time employee of the government of a [VWP] program country." 8 U.S.C. 1187(a)(12)(B).

- City and country of birth;
- Gender;
- Email address;
- Telephone number (home, mobile, work, other);
- Home address (address, apartment number, city, state/region);
- Internet protocol (IP) address;
- ESTA application number;
- Global Entry Program Number;
- Country of residence;
- Passport number;
- Passport issuing country;
- Passport issuance date;
- Passport expiration date;
- Department of Treasury Pay.gov payment tracking number (*i.e.*, confirmation of payment; absence of payment confirmation will result in a "not cleared" determination);
- Country of citizenship;
- Other citizenship (country, passport number);
- National identification number, if available;
- Address while visiting the United States (number, street, city, state);
- Emergency point of contact information (name, telephone number, email address);
- U.S. Point of Contact (name, address, telephone number);
- Parents' names;
- Current job title;
- Current or previous employer name;
- Current or previous employer street address; and
- Current or previous employer telephone number.

The categories of records in ESTA also include responses to the following questions:

- Do you have a physical or mental disorder, or are you a drug abuser or addict,[3] or do you currently have any of the following diseases (communicable diseases are specified pursuant to sec. 361(b) of the Public Health Service Act):
  - Cholera
  - Diphtheria
  - Tuberculosis, infection
  - Plague
  - Smallpox
  - Yellow Fever
  - Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo
  - Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality.
- Have you ever been arrested or convicted for a crime that resulted in serious damage to property, or serious harm to another person or government authority?
- Have you ever violated any law related to possessing, using, or distributing illegal drugs?
- Do you seek to engage in or have you ever engaged in terrorist activities, espionage, sabotage, or genocide?
- Have you ever committed fraud or misrepresented yourself or others to obtain, or assist others to obtain, a visa or entry into the United States?
- Are you currently seeking employment in the United States or were you previously employed in the United States without prior permission from the U.S. government?
- Have you ever been denied a U.S. visa you applied for with your current or previous passport, or have you ever been refused admission to the United States or withdrawn your application for admission at a U.S. port of entry? If yes, when and where?
- Have you ever stayed in the United States longer than the admission period granted to you by the U.S. government?
- Have you traveled to, or been present in, Iraq, Syria, Iran, Sudan, Somalia, Libya, or Yemen on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel. Depending on the purpose of travel to these countries, additional responses may be required including:
  - Previous countries of travel;
  - Dates of previous travel;
  - Countries of previous citizenship;
  - Other current or previous passports;
  - Visa numbers;
  - Laissez-Passer numbers;
  - Identity card numbers;
  - Organization, company, or entity on behalf of which you traveled;
  - Official position/title with the organization, company, or entity behalf of which you traveled;
  - Contact information for organization, company, or entity on behalf of which you traveled;
  - Iraqi, Syrian, Iranian, Sudanese, Somali, Libyan, or Yemeni Visa Number;
  - I-Visa, G-Visa, or A-Visa number, if issued by a U.S. Embassy or Consulate;
  - All organizations, companies, or entities with which you had business dealings, or humanitarian contact;
  - Grant number, if applicant's organization has received U.S. government funding for humanitarian assistance within the last five years;
  - Additional passport information (if issued a passport or national identity card for travel by any other country), including country, expiration year, and passport or identification card number;
  - Any other information provided voluntarily in open, write-in fields provided to the ESTA applicant.
- Have you ever been a citizen or national of any other country? If yes, other countries of previous citizenship or nationality? If Iraq, Syria, Iran, Sudan, Somalia, Libya, or Yemen are selected, follow-up questions are asked regarding status of current citizenship including dual-citizenship information, and how citizenship was acquired.

Applicants who identify Iraq, Syria, Iran, Sudan, Somalia, Libya, or Yemen as their Country of Birth on ESTA will be directed to follow-up questions to determine whether they currently are a national or dual national of their country of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Homeland Security Act of 2002, 6 U.S.C. 201 *et seq.*, the Immigration and Naturalization Act, as amended, including 8 U.S.C. 1187(a)(11) and (h)(3), and implementing regulations contained in part 217, title 8, Code of Federal Regulations; the Travel Promotion Act of 2009, Public Law 111–145, 22 U.S.C. 2131.

PURPOSE(S):

The purpose of this system is to collect and maintain a record of persons who want to travel to the United States under the VWP, and to determine whether applicants are eligible to travel to and enter the United States under the VWP. The information provided through ESTA is also vetted—along with other information that the Secretary of Homeland Security determines is necessary, including information about other persons included on the ESTA application—against various security and law enforcement databases to identify those applicants who pose a security risk to the United States. This vetting includes consideration of the applicant's IP address, and all information provided in response to the ESTA application questionnaire, including all free text write-in responses.

The Department of Treasury Pay.gov tracking number (associated with the payment information provided to Pay.gov and stored in the Credit/Debit Card Data System, DHS/CBP–003 Credit/Debit Card Data System (CDCDS) 76 FR 67755 (November 2, 2011)) will be used to process ESTA and third party administrator fees and to reconcile issues regarding payment between

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[3] Immigration and Nationality Act 212(a)(1)(A). Pursuant to 8 U.S.C. 1182(a), aliens may be inadmissible to the United States if they have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or (ii) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or are determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict.

ESTA, CDCDS, and Pay.gov. Payment information will not be used for vetting purposes and is stored in a separate system (CDCDS) from the ESTA application data.

DHS maintains a replica of some or all of the data in ESTA on the unclassified and classified DHS networks to allow for analysis and vetting consistent with the above stated uses and purposes and this published notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any Component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration (GSA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (*e.g.,* to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk).

I. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure.

J. To a Federal, State, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS Component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

K. To Federal and foreign government intelligence or counterterrorism agencies or components when DHS becomes aware of an indication of a threat or potential threat to national or international security to assist in countering such threat, or to assist in anti-terrorism efforts.

L. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

M. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

N. To the carrier transporting an individual to the United States, prior to travel, in response to a request from the carrier, to verify an individual's travel authorization status.

O. To the Department of Treasury's Pay.gov, for payment processing and payment reconciliation purposes.

P. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

DHS/CBP may retrieve records by any of the data elements supplied by the applicant.

SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Application information submitted to ESTA generally expires and is deemed "inactive" two years after the initial submission of information by the applicant. In the event that a traveler's passport remains valid for less than two years from the date of the ESTA approval, the ESTA travel authorization will expire concurrently with the passport. Information in ESTA will be retained for one year after the ESTA travel authorization expires. After this period, the inactive account information will be purged from online access and archived for 12 years. Data linked at any time during the 15-year retention period (generally 3 years active, 12 years archived), to active law enforcement lookout records, will be matched by DHS/CBP to enforcement activities, and/or investigations or cases, including ESTA applications that are denied authorization to travel, will remain accessible for the life of the law enforcement activities to which they may become related. NARA guidelines for retention and archiving of data will apply to ESTA and DHS/CBP continues to negotiate with NARA for approval of the ESTA data retention and archiving plan. Records replicated on the unclassified and classified networks will follow the same retention schedule. Payment information is not stored in ESTA, but is forwarded to Pay.gov and stored in DHS/CBP's financial processing system, CDCDS, pursuant to the DHS/CBP–018, CDCDS system of records notice. When a VWP traveler's ESTA data is used for purposes of processing his or her application for admission to the United States, the ESTA data will be used to create a corresponding admission record in the DHS/CBP–016 Non-Immigrant Information System (NIIS). This corresponding admission record will be retained in accordance with the NIIS retention schedule, which is 75 years.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Automated Systems, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

Applicants may access their ESTA information to view and amend their applications by providing their ESTA number, birth date, and passport number. Once they have provided their ESTA number, birth date, and passport number, applicants may view their ESTA status (authorized to travel, not authorized to travel, pending) and submit limited updates to their travel itinerary information. If an applicant does not know his or her application number, he or she can provide his or her name, passport number, date of birth, and passport issuing country to retrieve his or her application number.

In addition, ESTA applicants and other individuals whose information is included on ESTA applications may submit requests and receive information maintained in this system as it relates to data submitted by or on behalf of a person who travels to the United States and crosses the border, as well as, for ESTA applicants, the resulting determination (authorized to travel, pending, or not authorized to travel). However, the Secretary of Homeland Security has exempted portions of this system from certain provisions of the Privacy Act related to providing the accounting of disclosures to individuals because it is a law enforcement system. DHS/CBP will, however, consider individual requests to determine whether or not information may be released. In processing requests for access to information in this system, DHS/CBP will review the records in the operational system and coordinate with DHS to ensure that records that were replicated on the unclassified and classified networks, are reviewed and based on this notice provide appropriate access to the information.

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Headquarters Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "FOIA Contact Information." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, individuals should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his or her agreement for you to access his or her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

DHS/CBP obtains records from information submitted by travelers via the online ESTA application at *https://esta.cbp.dhs.gov/esta/.*

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (authorized to travel, pending, or not authorized to travel). Information in the system may be shared with law enforcement and/or intelligence agencies pursuant to the above routine uses. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement or intelligence agency has sought and been provided particular records may affect ongoing law enforcement activities. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will continue to claim exemption from secs. (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information, as described in the previously published Final Rule to exempt this system of records from certain provisions of the Privacy Act on August 31, 2009 (74 *Fed. Reg.* 45070). Further, DHS will claim exemption from sec. (c)(3) of the Privacy Act of 1974, *as amended,* pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

Dated: June 10, 2016.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–14422 Filed 6–16–16; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–25]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2703 Martin Luther King Jr. Avenue SE., Stop 7741, Washington, DC 20593–7714; (202) 475–5609; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: June 9, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/17/2016

Suitable/Available Properties

Building

Alabama

Gadsden Federal Building and Courthouse
600 Broad Street
Gadsden AL 35901
Landholding Agency: GSA
Property Number: 54201620018
Status: Excess
GSA Number: 4–G–AL–0805–AA
Comments: 105+ yrs. old; 17,488 sq. ft.; office & courthouse; listed on the national historic register; access must be coordinated, contact GSA for more information.

Historic Hannah Houses
157 and 159 N Conception Street
Mobile AL 36603
Landholding Agency: GSA
Property Number: 54201620020
Status: Excess
GSA Number: 4–G–AL–0817AAA
Comments: 163+ yrs. old; 8,868 sq. ft.; office; residential; vacant 120+ mos.; rehabilitation work needed; contact GSA for more information.

Maryland

Chapel Naval Station (Facility No. 127NS)
55 Eucalyptus Road
Annapolis MD 21402
Landholding Agency: Navy
Property Number: 77201620019
Status: Underutilized
Comments: off-site removal only; 68+ yrs. old; 2,062 sq. ft.; storage; 60+ mos. vacant; repairs needed; no future agency need; contact Navy for more information.

Massachusetts

Shed
1 Little Harbor Road
Falmouth MA 02543
Landholding Agency: Coast Guard
Property Number: 88201620003
Status: Excess
Comments: off-site removal only; 20+ yrs. old; 240 sq. ft. each; shed; requires maintenance; contact Coast Guard for more information.

North Carolina

Bryson City Federal Building and Courthouse
50 Main Street
Bryson City NC 28713
Landholding Agency: GSA
Property Number: 54201620019
Status: Excess
GSA Number: 4–G–NC–0838–AA
Comments: 54+ yrs. old; 34,156 sq. ft.; office & courthouse; access must be coordinated; lease expires less than 6 mos.; sits on 1.3 acres of land; contact GSA for more information.

Virginia

Bldg. 27267
Bldg. 27267; MCB–4
Martine Corps Base
Quantico VA 22134
Landholding Agency: Navy
Property Number: 77201620020
Status: Unutilized
Comments: off-site removal only; 13+ yrs. old; 713 sq. ft.; storage; no future agency need; contact Navy for more information.

Washington

Wenatchee Federal Building
301 Yakima Street
Wenatchee WA 98001
Landholding Agency: GSA
Property Number: 54201620012
Status: Excess
GSA Number: 9–G–WA–1286
Directions: The property is leased to governmental tenants and will continue to be leased 24 months from the date of sale with the option, to renew for a 5-year term.
Comments: 104,414 sf 4 story office building with full basement and mechanical penthouse constructed in 1973 on a 2.7-acre lot with 129 parking spaces; contact GSA for more information.

N Border Housing at the Laurie LOPE
27107 Highway 395 North
Laurier WA 99146
Landholding Agency: GSA
Property Number: 54201620022
Status: Excess
GSA Number: 9–G–WA–1297–AA
Comments: off-site removal only; 80+ yrs. old; 1,970 sq. ft.; due to size/+yrs. relocation extremely difficult; storage; 144+ mos. vacant; contacts GSA for more information.

South Border Housing at the Laurier LOPE
27107 Highway 395 North
Laurier WA 99146
Landholding Agency: GSA
Property Number: 54201620023
Status: Excess
GSA Number: 9–G–WA–1297–AB
Comments: off-site removal only; 80+ yrs. old; 2,200 sq. ft.; due to size/+yrs. relocation extremely difficult storage; 144+ mos. vacant; contact GSA for more information.

Unsuitable Properties

Building

Maryland

Mini Mart/Package Store
(Facility #178NS)180 Kinkaid Road
Annapolis MD 21402
Landholding Agency: Navy
Property Number: 77201620018
Status: Underutilized
Comments: documented deficiencies: documentation provided represents a clear threat to personal physical safety; structural damages; hit by a vehicle 02/11/11.
Reasons: Extensive deterioration

Massachusetts

3 Buildings

1 Little Harbor Rd.
Falmouth MA 02543
Landholding Agency: Coast Guard
Property Number: 88201620002
Status: Excess
Directions: Aids to Navigation Bldg.; Engineering Bldg., Supply Bldg.
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

[FR Doc. 2016–14058 Filed 6–16–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5938–N–01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates $299 million in Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act of 2016 for the purpose of assisting long-term recovery in South Carolina and Texas. This notice describes applicable waivers and alternative requirements, relevant statutory provisions for grants provided under this notice, the grant award process, criteria for plan approval, and eligible disaster recovery activities. The waivers, alternative requirements, and other provisions of this notice reflect the Department's commitment to expediting recovery, increasing the resilience of impacted communities and ensuring transparency in the use of Federal disaster recovery funds.

DATES: *Effective Date:* June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Allocations
II. Use of Funds
III. Management and Oversight of Funds
IV. Authority To Grant Waivers

V. Overview of Grant Process
VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements
  A. Grant Administration
  B. Housing and Related Floodplain Issues
  C. Infrastructure
  D. Economic Revitalization
  E. Certifications and Collection of Information
VII. Duration of Funding
VIII. Catalog of Federal Domestic Assistance
IX. Finding of No Significant Impact
Appendix A: Allocation Methodology

I. Allocations

Section 420 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015) (Appropriations Act) makes available $300 million in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2015, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*), related to the consequences of Hurricane Joaquin and adjacent storm systems, Hurricane Patricia, and other flood events. The Appropriations Act provides $1 million of these funds for the Department's management and oversight of funded disaster recovery grants. The law provides that grants shall be awarded directly to a State or unit of general local government (UGLG) at the discretion of the Secretary. Unless noted otherwise, the term "grantee" refers to the State or UGLG receiving a direct award from HUD under this notice. To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD allocates funds using the best available data that cover all of the eligible affected areas.

Based on a review of the impacts from these disasters, and estimates of unmet need, HUD is making the following allocations:

TABLE 1—ALLOCATIONS UNDER PUBLIC LAW 114–113

Disaster No.	State	Grantee	Allocation	Minimum amount that must be expended for recovery in the HUD-identified "most impacted" areas identified
4241	South Carolina	Lexington County (Urban County).	$16,332,000	($16,332,000) Lexington County Urban County jurisdiction.
4241	South Carolina	Columbia	19,989,000	(19,989,000) City of Columbia.
4241	South Carolina	Richland County (Urban County).	23,516,000	(23,516,000) Richland County Urban County jurisdiction.
4241	South Carolina	State of South Carolina	96,827,000	(65,494,200) Charleston, Dorchester, Florence, Georgetown, Horry, Lexington, Richland, Sumter, Williamsburg.
4223, 4245	Texas	Houston	66,560,000	(66,560,000) City of Houston.
4223, 4245	Texas	San Marcos	25,080,000	(25,080,000) City of San Marcos.
4223, 4245	Texas	State of Texas	50,696,000	(22,228,800) Harris, Hays, Hidalgo, Travis.
Total			299,000,000	

Table 1 also shows the HUD-identified "most impacted and distressed" areas impacted by the disasters that did not receive a direct award. At least 80 percent of the total funds provided within each State under this notice must address unmet needs within the HUD-identified "most impacted and distressed" areas, as identified in the last column in Table 1. A State may determine where the remaining 20 percent may be spent by identifying areas it deems as "most impacted and distressed." A detailed explanation of HUD's allocation methodology is provided at Appendix A.

Each grantee receiving an allocation under this notice must submit an initial action plan for disaster recovery, or "action plan," no later than 90 days after the effective date of this notice. HUD will only approve action plans that meet the specific requirements identified in this notice under section VI, "Applicable Rules, Statutes, Waivers, and Alternative Requirements."

II. Use of Funds

The Appropriations Act requires that prior to the obligation of funds a grantee shall submit a plan detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address long-term recovery, restoration of infrastructure, and housing and economic revitalization in the most impacted and distressed areas. Thus, an action plan for disaster recovery must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (HCD Act) or allowed by a waiver or alternative requirement published in this notice, and (2) respond to a disaster-related impact. To inform the plan, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities.

Additionally, as provided for in the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) and the U.S. Army Corps of Engineers (USACE), among other Federal sources. In accordance with Public Law 105–276, grantees are advised that not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through USACE. Additionally, CDBG–DR funds cannot supplant, and may not be used for activities reimbursable by or for which funds are made available by FEMA or USACE.

III. Management and Oversight of Funds

Consistent with 2 CFR 200.205 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements), HUD will evaluate the risks posed by grantees before they receive Federal awards. HUD believes there is merit in establishing an assessment method similar to the method employed under a prior CDBG–DR appropriation

(Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2)). Therefore, this notice requires grantees to submit documentation required by paragraphs (1) through (8) below ("Risk Analysis Documentation") in advance of signing a grant agreement that will allow the Department to ensure that grantees can adequately manage and oversee the CDBG–DR award.

The grant terms of the award will reflect HUD's risk assessment of the grantee and will require the grantee to adhere to the description of its grant oversight and implementation plan submitted in response to this notice (as described in paragraph 8 of section III of this notice). HUD will also institute an annual risk analysis as well as on-site monitoring of grantee management to further guide oversight of these funds.

Each grantee must submit Risk Analysis Documentation to demonstrate in advance of signing a grant agreement that it has in place proficient controls, procedures, and management capacity. This includes demonstrating financial controls, procurement processes, and adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act. The grantee must also demonstrate that it can effectively manage the funds, ensure timely expenditure of funds, maintain a comprehensive Web site regarding all disaster recovery activities assisted with these funds, and ensure timely communication of application status to applicants for disaster recovery assistance. Grantees must also demonstrate adequate capacity to manage the funds and address any capacity needs. In order to demonstrate proficient controls, procedures, and management capacity, each grantee must submit the following Risk Analysis Documentation to the grantee's designated HUD representative within 30 days of the effective date of this notice, or with the grantee's submission of its action plan, whichever date is earlier.

1. *Financial Controls.* A grantee has in place proficient financial controls if each of the following criteria is satisfied:

a. The grantee's most recent single audit and annual financial statement indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the single audit or annual financial statement identified weaknesses or deficiencies, the grantee must provide documentation showing how those weaknesses have been removed or are being addressed; and

b. The grantee has assessed its financial standards and has completed the HUD monitoring guide for financial standards (Pub. L. 114–113, Guide for Review of Financial Management (the Financial Management Guide)). The grantee's standards must conform to the requirements of the Financial Management Guide. The grantee must identify which sections of its financial standards address each of the questions in the guide and which personnel or unit are responsible for each item.

2. *Procurement.* A grantee has in place a proficient procurement process if:

a. For local governments: The grantee will follow the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable). The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate these provisions. The procedures should also indicate which personnel or unit are responsible for each item; or

b. For States: The grantee has adopted 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable), or the effect of the grantee's procurement process/standards are equivalent to the effect of procurements under 2 CFR 200.318 through 200.326, meaning that the process/standards operate in a manner providing fair and open competition. The grantee must provide its procurement standards and indicate how the sections of its procurement standards align with the provisions of 2 CFR 200.318 through 200.326, so that HUD may evaluate the overall effect of the grantee's procurement standards. The procedures should also indicate which personnel or unit are responsible for the task. Guidance on the procurement rules applicable to States is provided in paragraph A.22, section VI, of this notice.

3. *Duplication of benefits.* A grantee has adequate procedures to prevent the duplication of benefits when it provides HUD a uniform prevention of duplication of benefits procedure wherein the grantee identifies its processes for each of the following: (1) Verifying all sources of disaster assistance received by the grantee or applicant, as applicable; (2) determining an applicant's unmet need(s) before awarding assistance; and (3) ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. Grantee procedures shall provide that prior to the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and other sources of funding to prevent the duplication of benefits. The procedures should also indicate which personnel or unit is responsible for the task. Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the **Federal Register** at 76 FR 71060 (November 16, 2011) and in paragraph A.21, section VI, of this notice.

4. *Timely expenditures.* A grantee has adequate procedures to determine timely expenditures if a grantee provides procedures to HUD that indicate how the grantee will track expenditures each month, how it will monitor expenditures of its recipients, how it will reprogram funds in a timely manner for activities that are stalled, and how it will project expenditures to provide for the expenditure of all CDBG–DR funds within the period provided for in paragraph A.24 of section VI of this notice. The procedures should also indicate which personnel or unit is responsible for the task.

5. *Management of funds.* A grantee has adequate procedures to effectively manage funds if its procedures indicate how the grantee will verify the accuracy of information provided by applicants; if it provides a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and if it demonstrates that it has an internal auditor and includes a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse.

6. *Comprehensive disaster recovery Web site.* A grantee has adequate procedures to maintain a comprehensive Web site regarding all disaster recovery activities if its procedures indicate that the grantee will have a separate page dedicated to its disaster recovery that will contain links to all action plans, action plan amendments, performance reports, citizen participation requirements, contracts and activity/program information for activities described in the action plan. The procedures should also indicate the frequency of Web site updates and which personnel or unit is responsible for the task.

7. *Timely information on application status.* A grantee has adequate procedures to inform applicants of the status of their applications for recovery assistance, at all phases, if its procedures indicate methods for communication (*i.e.*, Web site, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates and identify

which personnel or unit is responsible for the task.

8. *Preaward Implementation Plan.* In order to assess risk as described in 2 CFR 200.205(b) and (c), the grantee will submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps. HUD will determine a plan is adequate to reduce risk if, at a minimum:

a. Capacity Assessment. The grantee has conducted an assessment of its capacity to carry out recovery efforts, and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified.

b. Staffing. The plan shows that the grantee has assessed staff capacity and identified personnel that will be in place for purposes of case management in proportion to the applicant population; program managers who will be assigned responsibility for each primary recovery area (*i.e.*, housing, economic revitalization, and infrastructure); and staff responsible for procurement/contract management, environmental compliance and compliance with applicable requirements, as well as staff responsibile for monitoring and quality assurance, and financial management. An adequate plan will also provide for an internal audit function with responsible audit staff reporting independently to the chief officer or board of the governing body of any designated administering entity.

c. Internal and Interagency Coordination. The grantee's plan describes, in the plan, how it will ensure effective communication between different departments and divisions within the grantee's organizational structure that are involved in CDBG–DR-funded recovery efforts between its lead agency and subrecipients responsible for implementing the grantee's action plan, and with other local and regional planning efforts to ensure consistency.

d. Technical Assistance. The grantee's implementation plan describes its plan for the procurement and provision of technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill gaps in knowledge or technical expertise required for successful and timely recovery implementation where identified in the capacity assessment.

e. Accountability. The grantee's plan identifies the principal lead agency responsible for implementation of the jurisdiction's CDBG–DR award and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction.

9. *Certification of Accuracy of Risk Analysis Documentation.* The grantee must submit a certification to the accuracy of its Risk Analysis Documentation submissions as required by section VI.E.44 of this notice.

Additionally, this notice requires grantees to submit to the Department a projection of expenditures and outcomes as part of its action plan for approval. Any subsequent changes, updates or revision of the projections will require the grantee to amend its action plan to reflect the new projections. This will enable HUD, the public, and the grantee to track planned versus actual performance. For more information on the projection requirements, see paragraph A.1.i of section VI of this notice.

In addition, grantees must enter expected completion dates for each activity in HUD's Disaster Recovery Grant Reporting (DRGR) system. When target dates are not met or are extended, grantees are required to explain the reason for the delay in the Quarterly Performance Report (QPR) activity narrative. For additional guidance on DRGR system reporting requirements, see paragraph A.2 under section VI of this notice. More information on the timely expenditure of funds is included in paragraphs A.24–27 under section VI of this notice.

Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section VI of this notice. The Department will institute risk analysis and on-site monitoring of grantee management to guide oversight of these funds.

IV. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including, but not limited to, requirements concerning lead-based paint). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title 1 of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. Grantees may request such waivers, as described in Section VI of this notice.

V. Overview of Grant Process

To begin expenditure of CDBG–DR funds, the following expedited steps are necessary:

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of paragraph A.3 of section VI of this notice.
- Grantee consults with stakeholders, including required consultation with affected, local governments and public housing authorities (as identified in section VI of this notice).
- Within 30 days of the effective date of this notice (or when the grantee submits its action plan, whichever is earlier), the grantee submits the required documentation in its Risk Analysis Documentation in order to demonstrate proficient controls, procedures, and management capacity, as described in section III of this notice.
- Grantee publishes its action plan for disaster recovery on the grantee's required disaster recovery Web site for no less than 14 calendar days to solicit public comment.
- Grantee responds to public comment and submits its action plan (which includes Standard Form 424 (SF–424) and certifications) to HUD no later than 90 days after the date of this notice.
- HUD expedites review (allotted 60 days from date of receipt) and approves the action plan according to criteria identified in this notice.
- HUD sends an action plan approval letter, grant conditions, and grant agreement to the grantee. If the action plan is not approved, a letter will be sent identifying its deficiencies; the grantee must then resubmit the action plan within 45 days of the notification letter.
- Grantee signs and returns the fully executed grant agreement.
- Grantee ensures that the final HUD-approved action plan is posted on its official Web site.
- HUD establishes the grantee's line of credit.
- Grantee requests and receives DRGR system access (if the grantee does not already have DRGR access).
- If it has not already done so, grantee enters the activities from its published action plan into the DRGR system and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system).
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24

CFR part 58 and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification.

The grantee must begin to draw down funds no later than 180 days after the date of this notice.

VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements imposed by the Appropriations Act, as well as applicable waivers and alternative requirements. For each waiver and alternative requirement, the Secretary has determined that good cause exists and the action remains consistent with the overall purpose of the HCD Act. The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also ensuring that statutory requirements are met. The following requirements apply only to the CDBG–DR funds appropriated in the Appropriations Act, and not to funds provided under the annual formula State or Entitlement CDBG programs, or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program, or any prior CDBG–DR appropriation.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Except where noted, waivers and alternative requirements described below apply to all grantees under this notice. Under the requirements of the Appropriations Act, waivers and alternative requirements must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

Except as described in this notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this notice while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to entitlement communities receiving an allocation. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and Entitlement regulations can be found at 24 CFR part 570.

References to the action plan in these regulations shall refer to the action plan required by this notice. All references in this notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The date of this notice shall mean the effective date of this notice unless otherwise noted.

A. Grant Administration

1. *Action Plan for Disaster Recovery waiver and alternative requirement.* Requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 91.220, and 24 CFR 91.320, are waived for these disaster recovery grants. Instead, grantees must submit to HUD an action plan for disaster recovery. This streamlined plan will allow grantees to quickly implement disaster recovery programs while conforming to applicable requirements. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy all of the required elements identified in this notice.

a. *Action Plan.* The action plan must identify the proposed use of all funds, including criteria for eligibility, and how the uses address long-term recovery needs. Funds dedicated for uses not described in accordance with paragraphs b or c under this section will not be obligated until the grantee submits, and HUD approves, an action plan amendment programming the use of those funds, at the necessary level of detail.

The action plan must contain:

1. An impact and unmet needs assessment. Each grantee must develop a needs assessment to understand the type and location of community needs to enable it to target limited resources to areas with the greatest need. Grantees receiving an award under this notice must conduct a needs assessment to inform the allocation of CDBG–DR resources. At a minimum, the needs assessment must evaluate three core aspects of recovery—housing (interim and permanent, owner and rental, single-family and multifamily, affordable and market rate, and housing to meet the needs of predisaster homeless persons), infrastructure, and the economy (*e.g.*, estimated job losses). The assessment must also take into account the various forms of assistance available to, or likely to be available to, affected communities (*e.g.*, projected FEMA funds) and individuals (*e.g.*, estimated insurance) to ensure CDBG–DR funds meet needs that are not likely to be addressed by other sources of funds. Grantees must also assess whether public services (*i.e.*, job training, mental health and general health services) are necessary to complement activities intended to address housing and economic revitalization needs. The assessment must use the most recent available data and cite data sources. CDBG–DR funds may be used to develop the action plan, including the needs assessment, environmental review, and citizen participation requirements.

Impacts should be described geographically by type at the lowest level practicable (*e.g.*, county level or lower if available for States, and neighborhood or census tract level for cities). Grantees should use the most recent available data and estimate the portion of need likely to be addressed by insurance proceeds, other Federal assistance, or any other funding source (thus producing an estimate of unmet need). In addition, a needs assessment must take into account the costs of incorporating mitigation and resilience measures to protect against future hazards, including the anticipated effects of climate change on those hazards. HUD has developed a Disaster Impact and Unmet Needs Assessment Kit to guide CDBG–DR grantees through a process for identifying and prioritizing critical unmet needs for long-term community recovery, and it is available on the HUD Exchange Web site at *https://www.hudexchange.info/resources/documents/Disaster_Recovery_Disaster_Impact_Needs_Assessment_Kit.pdf.*

Disaster recovery needs evolve over time and the needs assessment and action plan are expected to be amended as conditions change and additional needs are identified.

2. A description of the connection between identified unmet needs and the allocation of CDBG–DR resources by the grantee. Such description must demonstrate a reasonably proportionate allocation of resources relative to areas and categories (*i.e.*, housing, economic revitalization, infrastructure) of greatest needs, including how the proposed allocation addressing the identified unmet needs of public housing, HUD-assisted housing, homeless facilities and other housing identified in paragraph 7 below.

3. A description of how the grantee plans to: (a) Adhere to the advanced elevation requirements established in paragraph A.28 of section VI of this notice; (b) promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account

continued sea level rise; and (c) coordinate with other local and regional planning efforts to ensure consistency. This information should be based on the history of FEMA flood mitigation efforts, and take into account projected increase in sea level and frequency and intensity of precipitation events, which is not considered in current FEMA maps and National Flood Insurance Program premiums.

4. A description of how the grantee will leverage CDBG–DR funds with funding provided by other Federal, State, local, private, and nonprofit sources to generate a more effective and comprehensive recovery. Examples of other Federal sources are those provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), Economic Development Administration, USACE, and the U.S. Department of Agriculture. The grantee should seek to maximize the number of activities and the degree to which CDBG funds are leveraged. Grantees shall report on leveraged funds in the DRGR system.

5. A description of how the grantee will design and implement programs or activities with the goal of protecting people and property from harm, and a description of how construction methods used will emphasize high quality, durability, energy efficiency, sustainability, and mold resistance, including how it will support adoption and enforcement of modern building codes and mitigation of hazard risk, including possible sea level rise, high winds, storm surge, and flooding, where appropriate. The grantee must also describe how it will implement and ensure compliance with the Green Building standards required in paragraph A.28 of section VI of this notice. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Whenever feasible, grantees should follow best practices such as those provided by the U.S. Department of Energy's Guidelines for Home Energy Professionals—Professional Certifications and Standard Work Specifications. HUD also encourages grantees to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's water Web site; Indoor AirPlus Web site; Healthy Indoor Environment Protocols for Home Energy Upgrades Web site; and ENERGY STAR Web site: *www.epa.gov/greenbuilding.*

6. A description of the standards to be established for housing and small business rehabilitation contractors performing work in the jurisdiction and a mechanism for homeowners and small business owners to appeal rehabilitation contractor work. HUD strongly encourages the grantee to require a warranty period post-construction, with formal notification to homeowners and small business owners on a periodic basis (*e.g.,* 6 months and one month prior to expiration date of the warranty).

7. Each grantee must include a description of how it will identify and address the rehabilitation (as defined at 24 CFR 570.202), reconstruction and replacement of the following types of housing affected by the disaster: Public housing (including administrative offices), HUD-assisted housing (defined at subparagraph 1 above), McKinney-Vento Homeless Assistance Act-funded shelters and housing for the homeless—including emergency shelters and transitional and permanent housing for the homeless, and private market units receiving project-based assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program.

8. A description of how the grantee will encourage the provision of housing for all income groups that is resilient to natural hazards, including a description of the activities it plans to undertake to address: (a) The transitional housing, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) that are homeless and at-risk of homelessness; (b) the prevention of low-income individuals and families with children (especially those with incomes below 30 percent of the area median) from becoming homeless; and (c) the special needs of persons who are not homeless but require supportive housing (*e.g.,* elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315(e) or 91.215(e) as applicable). Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and ways to promote the availability of affordable housing in low-poverty, nonminority areas where appropriate and in response to natural hazard-related impacts.

9. A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced.

10. A description of how the grantee will handle program income, and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in this notice at paragraphs A.2 and A.17 of section VI.

11. A description of monitoring standards and procedures that are sufficient to ensure program requirements, including an analysis for duplication of benefits, are met and that provide for continual quality assurance and adequate program oversight.

b. *Funds Awarded Directly to a State.* The action plan shall describe the method of distribution of funds to UGLGs and/or descriptions of specific programs or activities the State will carry out directly (see section VI.A.4 of this notice for the alternative requirement permitting States to carry out activities directly). The description must include:

1. How the needs assessment informed allocation determinations, including the rationale behind the decision(s) to provide funds to State-identified "most impacted and distressed" areas that were not defined by HUD as being "most impacted and distressed," if applicable.

2. The threshold factors and grant size limits that are to be applied.

3. The projected uses for the CDBG–DR funds, by responsible entity, activity, and geographic area, when the State carries out an activity directly.

4. For each proposed program and/or activity carried out directly, its respective CDBG activity eligibility category (or categories) as well as national objective(s).

5. How the method of distribution to local governments or programs/activities carried out directly will result in long-term recovery from specific impacts of the disaster.

6. When funds are allocated to UGLGs, all criteria used to distribute funds to local governments including the relative importance of each criterion.

7. When applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

c. *Funds awarded directly to a UGLG.* The UGLG shall describe specific programs and/or activities it will carry out. The action plan must describe:

1. How the needs assessment informed allocation determinations.

2. The threshold factors and grant size limits that are to be applied.

3. The projected uses for the CDBG–DR funds, by responsible entity, activity, and geographic area.

4. How the projected uses of the funds will meet CDBG eligibility criteria and a national objective.

5. How the projected uses of funds will result in long-term recovery from specific impacts of the disaster.

6. All criteria used to select applications, including the relative importance of each criterion.

d. Clarification of disaster-related activities. All CDBG–DR activities must clearly address an impact of the disaster for which funding was allocated. Given the standard CDBG requirements, this means each activity must: (1) Be CDBG-eligible (or receive a waiver), (2) meet a national objective, and (3) address a direct or indirect impact from the disaster in a Presidentially-declared county. A disaster-related impact can be addressed through any eligible CDBG activity. Additional details on disaster-related activities are provided under section VI, parts B through D. Additionally, HUD has developed a series of CDBG–DR toolkits that guide grantees through specific grant implementation activities. These can be found on the HUD Exchange Web site at *https://www.hudexchange.info/programs/cdbg-dr/toolkits/.*

1. Housing. Typical housing activities include new construction and rehabilitation of single-family or multifamily units. Most often, grantees use CDBG–DR funds to rehabilitate damaged homes and rental units. However, grantees may also fund new construction (see paragraph 28 of section VI of this notice) or rehabilitate units *not* damaged by the disaster if the activity clearly addresses a disaster-related impact and is located in a disaster-affected area. This impact can be demonstrated by the disaster's overall effect on the quality, quantity, and affordability of the housing stock and the resulting inability of that stock to meet post-disaster needs and population demands.

a. *Prohibition on forced mortgage payoff.* In some instances, homeowners with an outstanding mortgage balance are required, under the terms of their loan agreement, to repay the balance of the mortgage loan prior to using assistance to rehabilitate or reconstruct their homes. CDBG–DR funds, however, may not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG–DR funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not available to the homeowner and, therefore, do not constitute a duplication of benefits for the purpose of housing rehabilitation or reconstruction.

b. *Housing Counseling Services.* HUD-approved housing counseling agencies play a critical role in helping communities recover from a disaster by providing helpful information about key housing programs and resources available to both renters and homeowners. Grantees are encouraged to coordinate with approved housing counseling services to ensure that such services are made available to both renters and homeowners. Additional information is available for South Carolina at *http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=SC,* and for Texas at *http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=TX.*

2. Infrastructure. Typical infrastructure activities include the repair, replacement, or relocation of damaged public facilities and improvements to include, but not be limited to, bridges, water treatment facilities, roads, and sewer and water lines. Grantees that use CDBG–DR funds to assist flood control structures (*i.e.,* dams and levees) are prohibited from using CDBG–DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. Grantees that use CDBG–DR funds for levees and dams are required to: (1) Register and maintain entries regarding such structures with the U.S. Army Corps of Engineers National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the U.S. Army Corps of Engineers PL 84–99 Program (Levee Rehabilitation and Improvement Program); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) upload into DRGR system the exact location of the structure and the area served and protected by the structure; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures.

3. Economic Revitalization. For CDBG–DR purposes, economic revitalization may include any CDBG–DR eligible activity that demonstrably restores and improves some aspect of the local economy. The activity may address job losses, or negative impacts to tax revenues or businesses. Examples of eligible activities include providing loans and grants to businesses, funding job training, making improvements to commercial/retail districts, and financing other efforts that attract/retain workers in devastated communities. For additional guidance see *http://www.iedconline.org/web-pages/resources-publications/iedc-releases-new-disaster-recovery-publication/.*

All economic revitalization activities must address an economic impact(s) caused by the disaster (*e.g.,* loss of jobs, loss of public revenue). Through its needs assessment and action plan, the grantee must clearly identify the economic loss or need resulting from the disaster, and how the proposed activities will address that loss or need. Local and regional economic recoveries are typically driven by small businesses.

4. Preparedness and Mitigation. The Appropriations Act states that funds shall be used for recovering from a Presidentially declared major disaster and all assisted activities must respond to the impacts of the declared disaster. HUD strongly encourages grantees to incorporate preparedness and mitigation measures into the aforementioned rebuilding activities, which help to ensure that communities recover to be safer and stronger than prior to the disaster. Incorporation of these measures also reduces costs in recovering from future disasters. Mitigation measures that are not incorporated into those rebuilding activities must be a necessary expense related to disaster relief, long-term recovery, and restoration of infrastructure, housing, or economic revitalization that responds to the eligible disaster. Furthermore, the costs associated with these measures may not prevent the grantee from meeting unmet needs.

5. Connection to the Disaster. Grantees must maintain records about each activity funded, as described in the Recordkeeping section of this notice. In regard to physical losses, damage or rebuilding estimates are often the most effective tools for demonstrating the connection to the disaster. For economic or other nonphysical losses, post-disaster analyses or assessments may best document the relationship between the loss and the disaster.

Note that grantees are not limited in their recovery to returning to predisaster conditions. Rather, HUD encourages grantees to carry out activities in such a way that not only addresses the disaster-related impacts, but leaves communities sustainably positioned to meet the needs of their post-disaster population, economic, and environmental conditions.

e. Clarity of Action Plan. All grantees must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee. The action plan (and subsequent Amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (*e.g.,* by program, subgrantee, grantee-administered activity, or other category).

f. *Review and Approval of Action Plan.* For funds provided under the Appropriations Act, the action plan must be submitted to HUD (including SF–424 and certifications) within 90 days of the date of this notice. HUD will expedite its review of each action plan, taking no more than 60 days from the date of receipt to complete its review. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the Plan does not meet the requirements of this notice.

g. *Obligation and expenditure of funds.* Once HUD approves the action plan, it will then issue a grant agreement obligating all funds to the grantee. In addition, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee must also enter its action plan activities into the DRGR system in order to draw funds for those activities. The grantee may enter these activities into the DRGR system before or after submission of the action plan to HUD. Each activity must meet the applicable environmental requirements prior to the use of funds. After the Responsible Entity (usually the grantee) completes environmental review(s) pursuant to 24 CFR part 58 (as applicable) and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds must begin no later than 180 days after the date of this notice.

h. *Amending the Action Plan.* As the grantee finalizes its long-term recovery goals, or as needs change through the recovery process, the grantee must amend its action plan to update its needs assessment, modify or create new activities, or reprogram funds, as necessary. Each amendment must be highlighted, or otherwise identified, within the context of the entire action plan. The beginning of every action plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The action plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

i. *Projection of expenditures and outcomes.* Each grantee must amend its published action plan to project expenditures and outcomes within 90 days of action plan approval. The projections must be based on each quarter's expected performance—beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The published action plan must be amended to accommodate any subsequent changes, updates or revision of the projections. Guidance on the preparation of projection is available on the HUD Web site. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance.

2. *HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.*

a. *Performance review authorities.* 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the Quarterly Performance Report (QPR) and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at *https://www.hudexchange.info/programs/drgr/.*

b. *DRGR Action Plan.* Each grantee must enter its action plan for disaster recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports and permit HUD review of compliance requirements.

The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG–DR funds. The grantee may enter activities into the DRGR system before or after submission of the action plan to HUD. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity.

All funds programmed or budgeted at a general level in the DRGR system will be restricted from access on the grantee's line of credit. Once the general uses are described in an amended action plan, at the necessary level of detail, the funds will be released by HUD and made available for use.

Each activity entered into the DRGR system must also be categorized under a "project." Typically, projects are based on groups of activities that accomplish a similar, broad purpose (*e.g.,* housing, infrastructure, or economic revitalization) or are based on an area of service (*e.g.,* Community A). If a grantee describes just one program within a broader category (*e.g.,* single family rehabilitation), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project's budget. If a State grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published action plan, the MOD itself typically serves as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as subgrantees and subrecipients decide which specific CDBG–DR programs and projects will be funded.

c. *Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination.* Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The grantee's QPR will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring.

d. *Tracking program income in the DRGR system.* Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds (if applicable). If a grantee permits local governments or subrecipients to retain program income, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

e. *DRGR system Quarterly Performance Report (QPR).* Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official Web site. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full calendar year quarter after HUD enters the grant award into the DRGR system. For example, a grant award made in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend funding until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non–CDBG–DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

3. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at a State, entitlement, or local government level, but do require providing a reasonable opportunity (at least 14 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant administered under this notice are:

a. *Publication of the Action Plan, opportunity for public comment, and substantial amendment criteria.* Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery should be navigable by citizens from the grantee (or relevant agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Despite the expedited process, grantees are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This issue may be particularly applicable to States receiving an award under this notice. Unlike grantees in the regular State CDBG program, State grantees under this notice may make grants throughout the State, including to entitlement communities. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,* published on January 22, 2007, in the **Federal Register** (72 FR 2732).

Subsequent to publication of the action plan, the grantee must provide a reasonable time frame (again, no less than 14 days) and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in their action plan. The grantee may substantially amend the action plan if it follows the same procedures required in this notice for the preparation and submission of an action plan for disaster recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this notice, and all applicable regulations and Federal law.

b. *Nonsubstantial amendment.* The grantee must notify HUD, but is not required to undertake public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's Web site. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days. The grantee must define what constitutes a nonsubstantial amendment in its Citizen Participation Plan.

c. *Consideration of public comments.* The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment.

d. *Availability and accessibility of the Action Plan.* The grantee must make the action plan, any substantial amendments, and all performance reports available to the public on its Web site and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds.

e. *Public Web site.* HUD is requiring grantees to maintain a public Web site that provides information accounting for how all grant funds are used and managed/administered, including links to all action plans, action plan amendments, performance reports, citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its Web site: (1) The action plan (including all amendments); each QPR (as created using the DRGR system); (2) procurement policies and procedures; (3) executed CDBG–DR contracts; and (4) status of services or goods currently being procured by the grantee (*e.g.*, phase of the procurement, requirements for proposals, etc.).

f. *Application status.* HUD is requiring grantees to provide mediums of communication, such as Web sites or other means that provide individual applicants for recovery assistance with timely information on the status of their application, as provided for section III.7 of this notice.

g. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint, if practicable.

4. *Direct grant administration and means of carrying out eligible activities—applicable to State grantees only.* Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under this notice, rather than distribute all funds to UGLGs. Pursuant to this waiver, the standard at section 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. Activities eligible under this notice may be carried out, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements. Note that any city or county receiving a direct award from HUD under this notice will be subject to the standard CDBG entitlement program regulations and this waiver and alternative requirement is not applicable.

Activities made eligible under section 105(a)(15) of the HCD Act, as amended, whether the assistance is provided to such an entity from the State or from a UGLG, will follow the definition of a nonprofit under that section rather than the Entitlement program definition located in 24 CFR 570.204, even in such cases where the UGLG is an Entitlement jurisdiction.

5. *Consolidated Plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 24 CFR 91.225(a)(5), 24 CFR 91.325(b)(2), and 24 CFR 91.225(b)(3)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee submits its next full (3–5 year) consolidated plan, or for 24 months after the effective date of this notice, whichever is less. If the grantee is not scheduled to submit a new 3–5 year consolidated plan within the next 2 years, HUD expects each grantee to update its existing 3–5 year consolidated plan to reflect disaster-related needs no later than 24 months after the effective date of this notice. Additionally, grantees are encouraged to incorporate disaster-recovery needs into their consolidated plan updates as soon as practicable, any unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update no later than its Fiscal Year 2017 update. HUD has issued guidance for incorporating CDBG–DR funds into consolidated plans in the eCon Planning Suite. This guidance is on the HUD Exchange at *https://www.hudexchange.info/resource/4400/updating-the-consolidated-plan-to-reflect-disaster-recovery-needs-and-associated-priorities/.* This waiver does not affect the requirements of HUD's July 16, 2015, final rule on Affirmatively Furthering Fair Housing (80 FR 42272), which requires grantees to complete an Assessment of Fair Housing in accordance with the requirements of 24 CFR 5.160.

6. *Requirement for consultation during plan preparation.* Currently, the statute and regulations require States to consult with affected UGLGs in nonentitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that any State receiving an allocation under this notice consult with all disaster-affected UGLGs (including any CDBG-entitlement communities and any local public housing authorities) in determining the use of funds. This ensures that State grantees sufficiently assess the recovery needs of all areas affected by the disaster. Additional guidance on consultation with local stakeholders can be found in publications such as *Equity in Building Resilience in Adaptation Planning,* produced by the National Association for the Advancement of Colored People.

Last, and consistent with the approach encouraged through the National Disaster Recovery Framework and National Preparedness Goal, all grantees must consult with States, tribes, UGLGs, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area to ensure consistency of the action plan with applicable regional redevelopment plans. Grantees are encouraged to establish a recovery task force with representative members of each sector to advise the grantee on how its recovery activities can best contribute towards the goals of regional redevelopment plans.

7. *Overall benefit requirement.* The primary objective of the HCD Act is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income" (42 U.S.C. 5301(c)). To carry out this objective, the statute requires that 70 percent of the aggregate of CDBG program funds be used to support activities benefitting low- and moderate-income persons. In some prior disasters, the Secretary has waived the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR

570.484, and 24 CFR 570.200(a)(3) that 70 percent of funds be used for activities that benefit low- and moderate-income persons and, instead, established a 50 percent overall low- and moderate-income benefit requirement for a CDBG–DR grant. To ensure, however, that maximum assistance is provided initially to low- and moderate-income persons, the 70 percent overall benefit requirement shall remain in effect for this allocation, subject to a waiver request by an individual grantee to authorize a lower overall benefit for their CDBG–DR grant. A grantee's waiver requests are to be submitted to the grantee's designated HUD representative.

Grantees may seek to reduce the overall benefit requirement below 70 percent of the total grant, but must submit a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that low- and moderate-income persons' disaster-related needs have been sufficiently met and that the needs of non-low- and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

8. *Use of the "upper quartile" or "exception criteria" for low- and moderate-income area benefit activities.* Section 105(c)(2)(A) of the HCD Act generally provides that assisted activities designed to serve an area generally and clearly designed to meet identified needs of persons of low- and moderate-income in the area, shall be considered to principally benefit persons of low- and moderate-income if the area served in a metropolitan city or urban county is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income.

In some cases, HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile." A grantee qualifies for this exception when less than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more low- and moderate-income persons. In such communities, activities must serve an area that contains a percentage of low- and moderate-income residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee's census-block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. Disaster recovery grantees are required to use the most recent data available in implementing the exception criteria. The "exception criteria" apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by such criteria, including jurisdictions that receive disaster recovery funds from a State.

9. *Grant administration responsibilities and general administration cap.*

a. *Grantee responsibilities.* Each grantee shall administer its award directly, in compliance with all applicable laws and regulations. Each grantee shall be financially accountable for the use of all funds provided in this notice.

b. *General administration cap.* For all grantees under this notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant (plus program income) to be used for administrative costs, by the grantee, by entities designated by the grantee, by UGLGs, or by subrecipients. Thus, the total of all costs classified as administrative must be less than or equal to the 5 percent cap.

(1) *Combined technical assistance and administrative expenditures cap for States only.* For State grantees under this notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding $100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant, plus program income. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and program administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12). As a reminder, grantees may use CDBG–DR funds to develop a disaster recovery and response plan that addresses pre- and post-disaster hazard mitigation, if one does not currently exist (in accordance with paragraph (A)(1)(d)(4) of section VI of this notice).

(2) *Administrative expenditures cap for local governments.* Any city or county (UGLG) receiving a direct award under this notice is also subject to the 5 percent administrative cap. This 5 percent applies to all administrative costs—whether incurred by the grantee or its subrecipients. However, cities or counties receiving a direct allocation under this notice also remain limited to spending 20 percent of their total allocation on a combination of planning and program administration costs.

10. *Planning-only activities—applicable to State grantees only.* The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project-specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4).

The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of areawide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for

State grantees receiving an award under this notice, the Department is waiving the requirements at 24 CFR 570.483(b)(5) or (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-blight national objective. Instead, States must comply with 24 CFR 570.208(d)(4) when funding disaster recovery-assisted, planning-only grants, or directly administering planning activities that guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

Grantees are therefore strongly encouraged to use their planning funds to create pre-disaster plans for long-term recovery. Plans should include an assessment of natural hazard risks, including risks expected to increase due to climate change, to low- and moderate-income residents based on an analysis of data and findings in (1) the National Climate Assessment (NCA),[1] the U.S. Climate Resilience Toolkit,[2] The Impact of Climate Change and Population Growth on the National Flood Insurance Program Through 2100,[3] or the Community Resilience Planning Guide for Buildings and Infrastructure Systems prepared by the National Institute of Standards and Technology (NIST);[4] or (2) other climate risk related data published by the Federal Government, or other State or local government climate risk related data, including FEMA-approved hazard mitigation plans that incorporate climate change; and (3) other climate risk data identified by the jurisdiction. For additional guidance also see: The Coastal Hazards Center's *State Disaster Recovery Planning Guide*[5] and FEMA's *Guide on Effective Coordination of Recovery Resources for State, Tribal, Territorial and Local Incidents.*[6]

11. *Use of the urgent need national objective.* The CDBG certification requirements for documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this notice until 24 months after HUD first obligates funds to the grantee. In the context of disaster recovery, these standard requirements may impede recovery. Since the Department only provides CDBG–DR awards to grantees with documented disaster-related impacts and each grantee is limited to spending funds only in the most impacted and distressed areas, the following streamlined alternative requirement recognizes the urgency in addressing serious threats to community welfare following a major disaster.

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, each grantee receiving a direct award under this notice must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. For each activity that will meet an urgent need national objective, grantees must reference in their action plan needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing.

Grantees should still be mindful to use the low- and moderate-income person benefit national objective for all activities that qualify under the criteria for that national objective. At least 70 percent of the entire CDBG–DR grant award must be used for activities that benefit low- and moderate-income persons (see section VI.A.7 of this notice for overall benefit requirement and instructions for seeking an alternative requirement to the 70-percent rule).

12. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.* Section 5302(a)(7) of title 42 U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit a State from distributing CDBG funds to entitlement communities and tribes under the CDBG program, are waived, including 24 CFR 570.480(a). Instead, the State may distribute funds to units of local government and tribes.

13. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls "subrecipients." The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

14. *Recordkeeping.*

a. State grantees. When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG–DR funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the State; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

b. UGLG grantees. UGLGs remain subject to the recordkeeping requirements of 24 CFR 570.506.

15. *Change of use of real property—applicable to State grantees only.* This waiver conforms to the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to "unit of general local government" in 24 CFR 570.489(j), shall be read as "unit of general local government (UGLG) or State."

16. *Responsibility for review and handling of noncompliance—applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this notice: The State shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and UGLGs, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended, as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated

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[1] See *http://nca2014.globalchange.gov/highlights#submenu-highlights-overview.*

[2] See *https://toolkit.climate.gov.*

[3] See *http://www.acclimatise.uk.com/login/uploaded/resources/FEMA_NFIP_report.pdf.*

[4] See *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1197.pdf.*

[5] *http://coastalhazardscenter.org/dev/wp-content/uploads/2012/05/State-Disaster-Recovery-Planning-Guide_2012.pdf.*

[6] *https://www.fema.gov/media-library/assets/documents/101940.*

subrecipients, public agencies, or UGLGs.

17. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility as described under this notice. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

a. *Definition of program income.*

(1) For purposes of this subpart, "program income" is defined as gross income generated from the use of CDBG–DR funds, except as provided in subparagraph D of this paragraph, and received by a State, UGLG, tribe or a subrecipient of a State, UGLG, or tribe. When income is generated by an activity that is only partially assisted with CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (*e.g.,* a single loan supported by CDBG–DR funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–DR funds.

(b) Proceeds from the disposition of equipment purchased with CDBG–DR funds.

(c) Gross income from the use or rental of real or personal property acquired by a State, UGLG, or tribe or subrecipient of a State, UGLG, or tribe with CDBG–DR funds, less costs incidental to generation of the income (*i.e.,* net income).

(d) Net income from the use or rental of real property owned by a State, UGLG, or tribe or subrecipient of a State, UGLG, or tribe, that was constructed or improved with CDBG–DR funds.

(e) Payments of principal and interest on loans made using CDBG–DR funds.

(f) Proceeds from the sale of loans made with CDBG–DR funds.

(g) Proceeds from the sale of obligations secured by loans made with CDBG–DR funds.

(h) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(i) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement.

(j) Gross income paid to a State, UGLG, or tribe, or paid to a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–DR assistance.

(2) "Program income" does not include the following:

(a) The total amount of funds that is less than $35,000 received in a single year and retained by a State, UGLG, tribe, or retained by a subrecipient thereof.

(b) Amounts generated by activities eligible under section 105(a)(15) of the HCD Act and carried out by an entity under the authority of section 105(a)(15) of the HCD Act.

b. *Retention of program income.* Per 24 CFR 570.504(c), a unit of government receiving a direct award under this notice may permit a subrecipient to retain program income. State grantees may permit a UGLG or tribe that receives or will receive program income to retain the program income, but are not required to do so.

c. *Program income—use, close out, and transfer.*

(1) Program income received (and retained, if applicable) before or after close out of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used in accordance with the grantee's action plan for disaster recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph D of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A grantee may transfer program income before close out of the grant that generated the program income to its annual CDBG program. In addition, State grantees may transfer program income before close out to any annual CDBG-funded activities carried out by a UGLG or tribe within the State. Program income received by a grantee, or received and retained by a subgrantee, after close out of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is *not* used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the grantee's regular CDBG program rules.

d. Revolving loan funds. UGLGs receiving a direct award under this notice, State grantees, and UGLGs or tribes (permitted by a State grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State grantees may also establish a revolving fund to distribute funds to UGLGs or tribes to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Note that no revolving fund established per this notice shall be directly funded or capitalized with CDBG–DR grant funds, pursuant to 24 CFR 570.489(f)(3).

18. *Reimbursement of disaster recovery expenses.* The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable costs incurred by itself or its recipients, subgrantees, or subrecipients (including public housing authorities (PHAs)) on or after the incident date of the covered disaster. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. Section 570.200(h)(1)(i) will not apply to the extent that it requires preagreement activities to be included in a consolidated plan. The Department expects both State and local government grantees to include all preagreement activities in their action plans. The provisions at 24 CFR 570.200(h) and 570.489(b) apply to grantees reimbursing costs incurred by itself or its recipients or subrecipients prior to the execution of a grant agreement with HUD. Additionally, grantees are permitted to charge to grants the preaward and preapplication costs of homeowners, businesses, and other qualifying entities for eligible costs they have incurred in response to an eligible disaster covered under this notice.

However, a grantee may not charge such preaward or preapplication costs to grants if the preaward or preapplication action results in an adverse impact to the environment. Grantees are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act (16 U.S.C. 1536) when designing a reimbursement program.

19. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.* Activities and projects assisted by CDBG–DR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and Section 104(d) requirements for grantees under this notice:

a. *One-for-one replacement.* One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out a program or activity that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for rehabilitation" in its action plan or in policies/procedures governing these programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD regional relocation specialist responsible for their State.

HUD is waiving the one-for-one replacement requirements because they do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

b. *Relocation assistance.* The section 104(d) relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.*, buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

c. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that any tenants occupying real property that is acquired through voluntary purchase may be eligible for relocation assistance.

d. *Rental assistance to a displaced person.* The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the grantee to use 30 percent of a low-income, displaced person's household income in computing a rental assistance payment if the person had been paying rent in excess of 30 percent of household income without "demonstrable hardship" before the project. Thus, if a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, using 30 percent of household income to calculate the rental assistance would not be required. Before carrying out a program activity in which the grantee provides rental assistance payments to displaced persons, the grantee must define "demonstrable hardship" in its action plan or in the policies and procedures governing these programs and activities. The grantee's definition of demonstrable hardship applies when implementing these alternative requirements.

e. *Tenant-based rental assistance.* The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.*, Section 8 rental voucher or certificate), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited.

f. *Moving expenses.* The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a grantee offer a displaced person the option to receive a fixed moving-cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the grantee must establish and offer the person a "moving expense and dislocation allowance" under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Without this waiver and alternative requirement, disaster recovery may be impeded by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established "moving expense and dislocation allowance."

g. *Optional relocation policies.* The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee or State recipient level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver makes clear grantees, including subrecipients, receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG–DR funds.

20. *Environmental requirements.*

a. *Clarifying note on the process for environmental release of funds when a State carries out activities directly.* Usually, a State distributes CDBG funds to UGLGs and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly, in addition to distributing funds to subrecipients and/or subgrantees. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the Certification and Request for Release of Funds to HUD for approval.

b. *Adoption of another agency's environmental review.* In accordance with the Appropriations Act, recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCD Act. The grantee must notify HUD in writing of its decision to adopt another agency's environmental review. The grantee must retain a copy of the review in the grantee's environmental records.

c. *Unified Federal Review.* The Sandy Recovery Improvement Act was signed into law on January 29, 2013, and directed the Administration to "establish an expedited and unified interagency review process (UFR) to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law." The process aims to coordinate environmental and historic preservation reviews to expedite planning and decisionmaking for disaster recovery projects. This can improve the Federal Government's assistance to States, local, and tribal governments; communities; families; and individual citizens as they recover from future presidentially declared disasters. Tools for the UFR process can be found at here: *http://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters.*

d. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with allocations under this notice if the recipient has adopted an environmental review, approval, or permit under subparagraph b above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

e. *Historic preservation reviews.* To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional, and support the capacity of the State Historic Preservation Officer/Tribal Historic Preservation Officer to review CDBG–DR projects. For more information on qualified historic preservation professional standards see *https://www.nps.gov/history/local-law/arch_stnds_9.htm.*

21. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with this law and the limitation on the use of CDBG–DR funds under the Appropriations Act for necessary expenses, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Grantees are subject to the requirements of a separate notice explaining the duplication of benefit requirements (76 FR 71060, published November 16, 2011). As a reminder, and as noted in the November 16, 2011, notice, at section VI, paragraph B, CDBG–DR funds may not be used to pay down an SBA home or business loan. Additionally, this notice does not require households and businesses to apply for SBA assistance prior to applying for CDBG–DR assistance. However, CDBG–DR grantees may institute an SBA application requirement in order to target assistance to households and businesses with the greatest need.

22. *Procurement.*

a. *State grantees.* Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Additionally, States and State subgrantees (UGLGs and subrecipients) shall follow requirements of 24 CFR 570.489(g). HUD is imposing a waiver and alternative requirement to require the State to establish requirements for procurement policies and procedures based on full and open competition for subrecipients in addition to UGLGs.

The State can comply with the requirement under 24 CFR 570.489(g) to follow its procurement policies and procedures and establish procurement requirements for its UGLGs and subrecipients in one of three ways (subject to 2 CFR 200.110, as applicable):

i. A State can follow its existing procurement policies and procedures and establish requirements for procurement policies and procedures for UGLGs and subrecipients, based on full and open competition, that specify methods of procurement (*e.g.,* small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability;

ii. A State can adopt 2 CFR 200.317, which requires the State to follow the same policies and procedures it uses for procurements from its non-Federal funds and comply with 2 CFR 200.322 (procurement of recovered materials) and 2 CFR 200.326 (required contract provisions), but requires the State to make its subrecipients and UGLGs follow 2 CFR 200.318 through 200.326; or

iii. A State can adopt the provisions that apply to CDBG entitlement grantees (2 CFR 200.318 through 2 CFR 200.326) for itself and its subgrantees (subrecipients and UGLGs).

b. *Direct grants to UGLGs.* Any UGLGs receiving a direct appropriation under today's notice is subject to procurement requirements in the Uniform Administrative Requirements at 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable).

c. *Additional requirements related to procurement (States and local governments).* HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a procurement process to perform specific functions, consistent with the procurement requirements in the CDBG program regulations; a subrecipient is not a contractor. For contractors employed to provide discrete services or deliverables only, HUD is establishing an additional alternative requirement to expand on existing provisions of 2 CFR 200.317 through 200.326 and 24 CFR 570.489(g) as follows: (1) Grantees are also required to ensure all contracts and agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or date of completion. (2) Grantees must incorporate performance requirements and penalties into each procured contract or agreement. Contracts that describe work performed by general management consulting services need not adhere to this requirement. (3) Grantees may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy development, and financial management. HUD will respond to grantee requests for technical assistance on contracting and procurement processes.

23. *Public Web site.* HUD is requiring grantees to maintain a public Web site that provides information accounting for how all grant funds are used, and managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its Web site: The Action Plan (including all amendments); each QPR (as created using the DRGR system); procurement policies and procedures; status of services or goods currently being procured by the grantee (*e.g.,* phase of the procurement, requirements for proposals, etc.) a copy of contracts the grantee has procured directly; and a summary of all procured contracts, including those procured by the grantee, recipients, or subrecipients. Grantees should post only those contracts subject to 24 CFR 85.36 or in accordance with the State's procurement policies. To assist grantees in preparing this summary, HUD has developed a template. The template can be accessed at: *https://www.onecpd.info/cdbg-dr/.* Grantees are required to use this template, and attach an updated version to the DRGR system each quarter as part of their QPR submissions. Updated summaries must also be posted quarterly on each grantee's Web site.

24. *Timely distribution of funds.* The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements under this notice. Grantees must expend 100 percent of their allocation of CDBG–DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

25. *Review of continuing capacity to carry out CDBG-funded activities in a timely manner.* If HUD determines that the grantee has not carried out its CDBG activities and certifications in accordance with the requirements in this notice, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply the corrective and remedial actions specified in paragraph 26 of this notice.

26. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) of the HCD Act to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

27. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a CDBG–DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation.

Consistent with the procedures described in this notice, the Department may adjust, reduce, or withdraw the CDBG–DR grant or take other actions as appropriate, except for funds that have expended for eligible approved activities.

B. Housing and Related Floodplain Issues

28. *Housing-related eligibility waivers.* The broadening of eligible activities under the HCD Act is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this notice.

Therefore, 42 U.S.C. 5305(a)(24) is waived to the extent necessary to allow: (1) Homeownership assistance for households with up to 120 percent of the area median income and (2) down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)). While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

In addition, 42 U.S.C. 5305(a) is waived and alternative requirements adopted to the extent necessary to permit new housing construction, and to require the following construction standards on structures constructed or rehabilitated with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a). All references to "substantial damage" and "substantial improvement" shall be as defined in 44 CFR 59.1 unless otherwise noted:

a. *Green Building Standard for Replacement and New Construction of Residential Housing.* Grantees must meet the Green Building Standard in this subparagraph for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (*i.e.,* demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load bearing interior or exterior walls.

b. *Meaning of Green Building Standard.* For purposes of this notice, the Green Building Standard means the grantee will require that all construction covered by subparagraph a, above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC–700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program.

c. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation other than that described in subparagraph (a), above, grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at *https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/.* Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (*e.g.,* faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

d. *Implementation of green building standards.* (i) For construction projects completed, under construction, or under contract prior to the date that assistance is approved for the project, the grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required; (ii) for specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

e. *Elevation standards for new construction, repair of substantial damage, or substantial improvement.* The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1). All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 1 percent annual floodplain. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

f. *Broadband infrastructure in housing.* Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than four rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the grantee documents that: (i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (ii) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (iii) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

g. *Resilient Home Construction Standard.* Grantees are strongly encouraged to incorporate a Resilient Home Construction Standard, meaning that all construction covered by subparagraph (a) meet an industry-recognized standard such as those set by the FORTIFIED Home™ Gold level for new construction of single-family, detached homes; and FORTIFIED Home™ Silver level for reconstruction of the roof, windows and doors; or FORTIFIED Home™ Bronze level for repair or reconstruction of the roof; or any other equivalent comprehensive resilient or disaster resistant building program. Further, grantees are strongly encouraged to meet the FORTIFIED Home™ Bronze level standard for roof repair or reconstruction, for all construction covered under subparagraph c. FORTIFIED Home™ is a risk-reduction program providing construction standards for new homes and retrofit standards for existing homes, which will increase a home's resilience to natural hazards, including high wind, hail, and tropical storms. Insurers can provide discounts for homeowner's insurance for properties certified as FORTIFIED. Property owners and grantees are encouraged to contact their insurance agent for current information on what discounts may be available. More information is also available at *https://disastersafety.org/fortified/fortified-home/.*

29. *Addressing Unmet Public Housing Needs.* The grantee must identify how it will address the rehabilitation, mitigation, and new construction needs of each disaster-impacted PHA within its jurisdiction, if applicable. The grantee must work directly with impacted PHAs in identifying necessary and reasonable costs and ensure that adequate funding from all available sources is dedicated to addressing the unmet needs of damaged public housing (*e.g.,* FEMA, insurance, and funds available from HUD's Office of Public and Indian Housing. In the rehabilitation, reconstruction and replacement of public housing provided for in the action plan pursuant to paragraph A.1.a.7 of section VI of this notice, each grantee must identify funding to specifically address the unmet needs described in this subparagraph. Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG–DR funds to assist public housing. Information on the PHAs impacted by the disaster is available on the Department's Web site.

30. *Housing incentives in disaster-affected communities.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. These grantees must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved action plan and published program design(s). This waiver does not permit a compensation program. If the grantee requires the incentives to be used for a particular purpose by the household receiving the assistance, then the eligible use for that activity will be that required use, not an incentive.

In undertaking a larger scale migration or relocation recovery effort that is intended to move households out of high-risk areas, grantees should consider how it can protect and sustain the impacted community and its assets. Grantees must also weigh the benefits and costs, including anticipated insurance costs, of redeveloping high-risk areas that were impacted by a disaster. Accordingly, grantees are prohibited from offering incentives to return households to disaster-impacted floodplains, unless the grantee can demonstrate to HUD how it will resettle such areas to mitigate against the risks of future disasters and the insurance costs of continued occupation of high-risk areas, through mechanisms that can reduce risks and insurance costs, such as new land use development plans, building codes or construction requirements, protective infrastructure development, or through restrictions on future disaster assistance to such properties.

31. *Limitation on emergency grant payments—interim mortgage assistance.* 42 U.S.C. 5305(a)(8) is modified to extend interim mortgage assistance to qualified individuals from 3 months to up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond 3 months, during which mortgage payments may be due but the home is inhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing rehabilitation payments to expedite recovery assistance to homeowners, but must establish performance milestones for the rehabilitation that are to be met by the homeowner in order to receive such payments. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

32. *Acquisition of real property; flood and other buyouts.* Grantees under this notice are able to carry out property acquisition for a variety of purposes. However, the term "buyouts" as referenced in this notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas as designated by the grantee. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

Grantees are encouraged to use buyouts strategically, as a means of acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices. To the maximum extent practicable, grantees should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program.

a. Clarification of "Buyout" and "Real Property Acquisition" activities. Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG–DR funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG–DR assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides *post*-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG–DR assistance.

Regardless of purchase price, all buyout activities are a type of acquisition of real property (as permitted by section 105(a)(1) of the HCD Act). However, only acquisitions that meet the definition of a "buyout" are subject to the post-acquisition land use restrictions imposed by the applicable prior notices. The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk from future flooding or to reduce the risk from the hazard that lead to the property's Disaster Risk Reduction Area designation. To conduct a buyout in a Disaster Risk Reduction Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG–DR allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

The distinction between buyouts and other types of acquisitions is important, because grantees may only redevelop an acquired property if the property is not acquired through a buyout program (*i.e.,* the purpose of acquisition was something other than risk reduction). When acquisitions are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (and the pre-disaster FMV may not be used).

a. Buyout requirements:

1. Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

2. No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) A public facility that is open on all sides and functionally related to a designated open space (*e.g.,* a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

3. After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or

relocation program, no subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the recipient to any Federal entity in perpetuity.

The entity acquiring the property may lease it to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold. In all cases, a deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.

4. Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG–DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses.

5. All buyout activities must be classified using the "buyout" activity type in the DRGR system.

6. Any State grantee implementing a buyout program or activity must consult with affected UGLGs.

7. When undertaking buyout activities, in order to demonstrate that a buyout meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCD Act and applicable regulatory criteria described below. Grantees are encouraged to consult with HUD prior to undertaking a buyout program with the intent of using the LMH national objective. Section 105(c)(3) of the HCD Act (42 U.S.C. 5305(c)(3)) provides that any assisted activity under this chapter that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low- and moderate-income only to the extent such housing will, upon completion, be occupied by such persons. In addition, the State CDBG regulations at 24 CFR 570.483(b)(3) and entitlement CDBG regulations at 24 CFR 570.208(a)(3) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low- and moderate-income households. Therefore, a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective. Buyout programs that assist low- and moderate-income persons can be structured in one of the following ways: (a) The buyout program combines the acquisition of properties with another direct benefit—Low- and Moderate-Income housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria in 24 CFR part 570 (*e.g.,* if the structure contains more than two dwelling units, at least 51 percent of the units must be occupied by low- and moderate-income households. (b) The program meets the low- and moderate income area benefit criteria to demonstrate national objective compliance, provided that the grantee can document that the properties acquired through buyouts will be used in a way that benefits all of the residents in a particular area where at least 51 percent of the residents are low- and moderate-income persons. When using the area benefit approach, grantees must define the service area based on the end use of the buyout properties. (c) The program meets the criteria for the low- and moderate-income limited clientele national objective, including the prohibition on the use of the limited clientele national objective when an activity's benefits are available to all residents of the area. A buyout program could meet the national objective criteria for the limited clientele national objective if it restricts buyout program eligibility to exclusively low- and moderate-income persons, and the buyout provides an actual benefit to the low- and moderate income sellers by providing pre-disaster valuation uniformly to those who participate in the program.

c. *Redevelopment of acquired properties.*

1. Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. (see subparagraph a.2 above).

2. Grantees may redevelop an acquired property if: (a) The property is not acquired through a buyout program and (b) the purchase price is based on the property's post-disaster value, consistent with applicable cost principles (the pre-disaster value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

3. In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans.

33. *Alternative requirement for housing rehabilitation—assistance for second homes.* The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG–DR buyout program (as defined by this notice). "Second homes" are defined in IRS Publication 936 (mortgage interest deductions).

34. *Flood insurance.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's Web site.

a. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG–DR funds for existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain). However, Federal, State, local, and tribal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. HUD also recommends the purchase of flood insurance outside of a Special Flood Hazard Area for properties that have been damaged by a flood, to better protect property owners from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future, but this is not a requirement.

b. *Future Federal assistance to owners remaining in a floodplain.*

1. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment)

to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. This means that a grantee may not provide disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

2. Section 582 also implies a responsibility for a grantee that receives CDBG–DR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at *http://uscode.house.gov/view.xhtml?req=granuleid:U.S.C.-prelim-title42-section5154a&num=0&edition=prelim.*

C. Infrastructure (Public Facilities, Public Improvements, Public Buildings)

35. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow grantees to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible. HUD believes this waiver is consistent with the overall purposes of the HCD Act, and is necessary for many grantees to adequately address critical infrastructure needs created by the disaster.

36. *Elevation of Nonresidential Structures.* Nonresidential structures must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 1 percent annual floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

37. *Use of CDBG as Match.* Additionally, as provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE). By law, the amount of CDBG–DR funds that may be contributed to a USACE project is $250,000 or less. However, the Appropriations Act prohibits use of funds for any activity reimbursable by, or for which funds are made available by FEMA or USACE.

D. Economic Revitalization

38. *National Objective Documentation for Economic Revitalization Activities.* 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this notice to identify the low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.,* the number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG–DR grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons.

39. *Public benefit for certain Economic Revitalization activities.* The public benefit provisions set standards for individual economic revitalization activities (such as a single loan to a business) and for economic revitalization activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set two decades ago and can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

This notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (f)(2), (f)(3), (f)(4)(i), (f)(5), and (f)(6), and 24 CFR 570.209(b)(1), (b)(2), (b)(3)(i), and (b)(4), for economic revitalization activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Paragraph (g) of 24 CFR 570.482, and 24 CFR 570.209(c), and (d) are also waived to the extent these provisions are related to public benefit.

40. *Clarifying note on Section 3 resident eligibility and documentation requirements.* The definition of "low-income persons" in 12 U.S.C. 1701u and 24 CFR 135.5 is the basis for eligibility as a section 3 resident. This notice authorizes grantees to determine that an individual is eligible to be considered a section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction. This authority does not impact other section 3 resident eligibility requirements in 24 CFR 135.5. All direct recipients of CDBG–DR funding must submit form HUD–60002 annually through the Section 3 Performance Evaluation and Registry System (SPEARS) which can be found on HUD's Web site.

41. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482 are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a

labor market area within the same State to continue business.

42. *Prioritizing small businesses.* To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to require grantees to prioritize assisting businesses that meet the definition of a small business as defined by SBA at 13 CFR part 121 or, for businesses engaged in "farming operations" as defined at 7 CFR 1400.3, and that meet the United States Department of Agriculture Farm Service Agency (FSA), criteria that are described at 7 CFR 1400.500, which are used by the FSA to determine eligibility for certain assistance programs.

43. *Prohibiting assistance to private utilities.* Funds made available under this notice may not be used to assist a privately owned utility for any purpose.

E. Certifications and Collection of Information

44. *Certifications waiver and alternative requirement.* Sections 91.225 and 91.325 of title 24 of the Code of Federal Regulations are waived. Each State or UGLG receiving a direct allocation under this notice must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

c. The grantee certifies that the action plan for Disaster Recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice. The grantee certifies that activities to be undertaken with funds under this notice are consistent with its action plan.

d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this notice.

e. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

f. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each UGLG receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

g. Each State receiving a direct award under this notice certifies that it has consulted with affected UGLGs in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

h. The grantee certifies that it is complying with each of the following criteria:

1. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in 2015 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) related to the consequences of Hurricane Joaquin and adjacent storm systems, Hurricane Patricia, and other flood events.

2. With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

3. The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the grant amount is expended for activities that benefit such persons.

4. The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) Disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations, and that it will affirmatively further fair housing.

j. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, States receiving a direct award must certify that they will require UGLGs that receive grant funds to certify that they have adopted and are enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

k. Each State or UGLG receiving a direct award under this notice certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements of this notice and requirements of Public Law 114–113 applicable to funds allocated by this notice, and certifies to the accuracy of Risk Analysis Documentation submitted to demonstrate that it has in place proficient financial controls and procurement processes; that it has adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds; that it has to maintain a comprehensive disaster recovery Web site to ensure timely communication of application status to applicants for disaster recovery assistance, and that its implementation plan accurately describes its current capacity and how it will address any capacity gaps.

l. The grantee certifies that it will not use CDBG–DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the State, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

m. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

n. The grantee certifies that it will comply with applicable laws.

VII. Duration of Funding

The Appropriations Act directs that these funds be available until expended. However, in accordance with 31 U.S.C. 1555, HUD shall close the appropriation account and cancel any remaining obligated or unobligated balance if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for 2 consecutive fiscal years. In such case, the funds shall not be available for obligation or expenditure for any purpose after the account is closed.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: June 8, 2016.

Nani A. Coloretti,

Deputy Secretary.

Appendix A—Allocation of CDBG–DR Funds as a Result of 2015 Flooding Disasters

This section describes the methods behind HUD's allocation of $300 million in the 2015 CDBG–DR Funds.

Section 420 (Division L, Title II) of Public Law 114–113, enacted on December 18, 2015, appropriates $300 million through the Community Development Block Grant (CDBG) program for necessary expenses for authorized activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2015 related to the consequences of Hurricane Joaquin and adjacent storm systems, Hurricane Patricia, and other flood events: This section requires that funds be awarded directly to the State or unit of general local government at the discretion of the Secretary.

The key underlying metric used in the allocation process is the unmet need that remains to be addressed from qualifying disasters. Unmet needs related to infrastructure and to damage to businesses and housing are used first to determine the most impacted and distressed areas that are eligible for grants and then to determine the amount of funding to be made available to each grantee.

Methods for estimating unmet needs for business, infrastructure, and housing: The data HUD staff have identified as being available to calculate unmet needs for qualifying disasters come from the following data sources:

- FEMA Individual Assistance program data on housing-unit damage as of December 21, 2015;
- SBA for management of its disaster assistance loan program for housing repair and replacement as of January 13, 2016;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss as of January 13, 2016; and
- FEMA-estimated and -obligated amounts under its Public Assistance program for permanent work, Federal and State cost share as of February 3, 2016.

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by SBA data from its Disaster Loan Program. HUD calculates "unmet housing needs" as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

- Each of the FEMA inspected owner units are categorized by HUD into one of five categories:
  - Minor-Low: Less than $3,000 of FEMA-inspected *real property* damage.
  - Minor-High: $3,000 to $7,999 of FEMA-inspected *real property* damage.
  - Major-Low: $8,000 to $14,999 of FEMA-inspected *real property* damage and/or 1 to 4 feet of flooding on the first floor.
  - Major-High: $15,000 to $28,800 of FEMA-inspected *real property* damage and/or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $28,800 of FEMA-inspected *real property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of "most impacted," homes are determined to have a serious level of damage if they have damage of "major-low" or higher. That is, they have a real property, FEMA-inspected damage of $8,000 or flooding over 1 foot. Furthermore, a homeowner is determined to have unmet needs if the homeowner received a FEMA grant to make home repairs. For homeowners with a FEMA grant and insurance for the covered event, HUD assumes that the unmet need "gap" is 20 percent of the difference between total damage and the FEMA grant.

- FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:
  - Minor-Low: Less than $1,000 of FEMA-inspected *personal property* damage.
  - Minor-High: $1,000 to $1,999 of FEMA-inspected *personal property* damage.
  - Major-Low: $2,000 to $3,499 of FEMA-inspected *personal property* damage and/or 1 to 4 feet of flooding on the first floor.
  - Major-High: $3,500 to $7,499 of FEMA-inspected *personal property* damage and/or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $7,500 of FEMA-inspected *personal property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of "most impacted," homes are determined to have a high level of damage if they have damage of "major-low" or higher. That is, they have a FEMA personal property damage assessment of $2,000 or greater or flooding over 1 foot. Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income of $30,000 or less. Units occupied by a tenant with income less than $30,000 are used to calculate likely unmet needs for affordable rental housing. For those units occupied by tenants with incomes under $30,000, HUD estimates unmet needs as 75 percent of the estimated repair cost.

- The average cost to fully repair a home *to code* for a specific disaster within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the SBA for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.

Calculating Unmet Infrastructure Needs

- To best proxy unmet infrastructure needs, HUD uses data from FEMA's Public Assistance program on the State match requirement (usually 25 percent of the estimated public assistance needs). This allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and State match requirement. Those activities are categories: C, Roads and Bridges; D, Water Control Facilities; E, Public Buildings; F, Public Utilities; and G, Recreational—Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used. Because Public Assistance damage estimates are available only Statewide (and not county), CDBG funding allocated by the estimate of unmet infrastructure needs are suballocated to counties and local jurisdictions based on each jurisdiction's proportion of unmet housing and business needs.

Calculating Economic Revitalization Needs

- Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster for which content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a State had 160 applications for assistance, 150 had calculated needs and 10 were denied in the preprocessing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as (1 + 10/160) multiplied by the calculated unmet real content loss.
- Because applications denied for poor credit or income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each State are adjusted upwards by the proportion of total applications that were denied at the preprocess stage because of poor credit or inability to show repayment ability. Similar to housing, estimated damage is used to determine what unmet needs will be counted as serious unmet needs. Only properties with total real estate and content loss in excess of $30,000 are considered serious damage for purposes of identifying the most impacted areas.
  - ○ Category 1: real estate + content loss = below 12,000.
  - ○ Category 2: real estate + content loss = 12,000–30,000.
  - ○ Category 3: real estate + content loss = 30,000–65,000.
  - ○ Category 4: real estate + content loss = 65,000–150,000.
  - ○ Category 5: real estate + content loss = above 150,000.
- To obtain unmet business needs, the amount for approved SBA loans is subtracted out of the total estimated damage.

Most Impacted and Distressed Designation

HUD allocates funds based on its estimate of the total unmet needs for infrastructure and the unmet needs for serious damage to businesses and housing that remain to be addressed in the most impacted counties after taking into account the most recent available data on insurance, FEMA assistance, and SBA disaster loans. To meet the statutory requirement that the funds be targeted to "the most impacted or distressed areas," this allocation:

1. Limits allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive Individual Assistance (IA) or Individual and Housing Program (IHP) funding.

2. Only accounts for homes and businesses that experienced damage categorized as "major-low" or higher (see definitions above). That is, it excludes homes and businesses with minor damage that may have some unmet needs remaining.

3. Restricts funding only to States with substantially higher unmet needs than other States impacted by disasters. Among disasters with data meeting the first two thresholds, HUD identifies a natural break in calculated serious unmet recovery needs and funds only grantees within those States.

4. Only includes housing and business unmet needs data toward a formula allocation if HUD calculated serious unmet housing and business needs for a county is in excess of a Most Impacted threshold. Specifically, only counties with $7 million or more in serious unmet housing and business needs are used to determine a State's allocation. Thus, funding is provided based on the serious needs of the most impacted counties in each State.

5. Factors in disaster-related infrastructure repair costs Statewide that are not reimbursed by FEMA Public Assistance. For all of these disasters, this is calculated as the 25 percent State match requirement.

6. Specifies the counties and jurisdictions that are most impacted or distressed by:

a. Providing direct funding to CDBG entitlement jurisdictions with significant remaining serious unmet needs. Within a State, if an entitlement jurisdiction accounts for $15 million or more of the funding allocated to the State, it is allocated a direct grant.

b. Directing that a minimum of 80 percent of the total funds allocated within a State, including those allocated directly to the State and to local governments, must be spent on the disaster recovery needs of the communities and individuals in the most impacted and distressed counties (*i.e.*, those counties identified by HUD). The principle behind the 80 percent rule is that each State received its allocation based on the unmet needs in the HUD-identified most impacted counties (those counties with more than $7 million in serious unmet housing and business needs) and, thus, HUD will require that all grantees within a State direct these limited resources toward those most impacted counties. Nonetheless, HUD recognizes that there are likely circumstances where its data is incomplete, damage is highly localized outside of one of the heavily impacted counties, or recovery would otherwise benefit from expenditures outside of those most impacted counties and, thus provides some flexibility to address those needs for State grantees. While local governments receiving direct grant allocations from HUD must spend their total grant within their own jurisdictions, HUD will allow a portion of the State nonentitlement grant to be spent outside of the most impacted counties, in an amount not to exceed that which yields 80 percent of all funding within a State to be spent in the most impacted counties.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total serious unmet recovery needs as the aggregate of:

- Serious unmet housing needs in most impacted counties.
- Serious unmet business needs in most impacted counties.
- The estimated local match requirement for the repair of infrastructure estimated for FEMA's Public Assistance program. Given the relatively late timing of several disasters in 2015, this information is generally available only at the State level and not yet at county level geography. HUD estimates a local government share of public assistance unmet need as proportional to their serious housing and business unmet needs.

Each State receives funding based on all of the infrastructure needs within the State, minus the infrastructure needs estimated to lie within entitlement jurisdictions receiving direct grants. In addition, each State also receives funding from all serious housing and business needs in the most impacted counties minus the estimated severe housing and business needs within entitlement jurisdictions receiving direct grants.

Special Note About Participating Jurisdictions Within Urban Counties

The formula allocations to entitlement jurisdictions are based on the geography that those jurisdictions serve in their regular CDBG program. Urban Counties are comprised of the balance of a county after subtracting out any CDBG entitlement cities and any incorporated towns or cities that choose to participate with the State government. If an incorporated town or city crosses two Urban County boundaries, it may choose the Urban County with which it will participate and the data from the town in the adjoining county would be included in the chosen county's allocation.

The formula allocation for the grant to the State government reflect both the nonentitled portions of the State under the regular CDBG program and all of the other areas of the most impacted counties not covered by the CDBG entitlement communities getting a direct grant. For example, the geography served by Livingston County, South Carolina includes one or more communities that cross over into Richland County, South Carolina. Because those communities participate with the Livingston County CDBG program and not the Richland County CDBG program, their need is reflected in the award to Livingston County. In addition, a number of incorporated towns in Richland County are served by the State CDBG program and the data for those communities were factored into the grant to the South Carolina State government and not the grant to the Richland County Urban County.

[FR Doc. 2016–14110 Filed 6–16–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16CD00B951000]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a revision of a currently approved information collection (1028–0097).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on October 31, 2016.

DATES: To ensure that your comments are considered, we must receive them on or before August 16, 2016.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference "Information Collection 1028–0097, State Water Resources Research Institute Program Annual Application, National Competitive Grants and Reporting" in all correspondence.

FOR FURTHER INFORMATION CONTACT: Earl Greene, Chief, Office of External Research, U.S. Geological Survey, 5522 Research Park Drive, Baltimore, MD 21228 (mail); 443–498–5505 (phone); *eagreene@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 *et seq.*), authorizes a research institute water resources or center in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and American Samoa. There are currently 54 such institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The institute in Guam is a regional institute serving Guam, the Federated States of Micronesia, and the Commonwealth of the Northern Mariana Islands. Each of the 54 institutes submits an annual application for an allotment grant, national competitive grants, and provides an annual report on its activities under the grant. The State Water Resources Research Institute Program issues an annual call for applications from the institutes to support plans to promote research, training, information dissemination, and other activities meeting the needs of the States and Nation. The State Water Resources Research Institute Program also issues an annual call for competitive grants to focus on water problems and issues of a regional or interstate nature beyond those of concern only to a single State. The U.S. Geological Survey has been designated as the administrator of the provisions of the Act.

II. Data

OMB Control Number: 1028–0097.

Form Number: NA.

Title: State Water Resources Research Institute Program Annual Application, National Competitive Grants and Reporting.

Type of Request: Extension of a currently approved collection.

Affected Public: The state water resources research institutes authorized by the Water Resources Research Act of 1983, as amended, and listed at *http://water.usgs.gov/wrri/index.php.*

Respondent's Obligation: Necessary to obtain benefits.

Frequency of Collection: Annually.

Estimated Total Number of Annual Responses: We expect to receive 54 applications and award 54 grants per year from State and local governments for the annual applications. We also expect to receive 65 applications from individuals and award 4 grants per year for the national competitive grants.

Estimated Time per Response: 10,320 hours. This includes 100 hours per government applicant to prepare and submit the annual application; 40 hours per individual applicant to prepare and submit the national competitive grant application and 40 hours (total) per grantee to complete the annual reports.

Estimated Annual Burden Hours: 10,320.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Earl A. Greene,

Chief, Office of External Research.

[FR Doc. 2016–14365 Filed 6–16–16; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1063–1064 and 1066–1068 (Second Review)]

Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam; Notice of Commission determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: Effective June 6, 2016.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On June 6, 2016, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). With respect to the orders on the subject merchandise from Brazil, India, Thailand, and Vietnam, the Commission found that both the domestic and respondent interested party group responses to its notice of institution (81 FR 10659, March 1, 2016) were adequate and determined to proceed to full reviews of the orders. With respect to the order on the subject merchandise from China, the Commission found that the domestic interested party group response was adequate and the respondent interested party group response was inadequate, but that circumstances warranted conducting a full review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 13, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–14291 Filed 6–16–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1006]

Certain Passenger Vehicle Automotive Wheels; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 11, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Daimler AG of Stuttgart, Germany. Supplements to the Complaint were filed on April 28, 2016 and April 29, 2016. On May 2, 2016, the Commission voted on Complainant's request to postpone the determination on whether to institute an investigation based on the Complaint, which was approved by the Commission. *See* EDIS Doc. ID 580171 (May 3, 2016). Complainant further supplemented the Complaint on May 18, 2016. The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain passenger vehicle automotive wheels by reason of infringement of U.S. Design Patent No. D542,211 ("the '211 patent"); U.S. Design Patent No. D582,330 ("the '330 patent"); U.S. Design Patent No. D656,078 ("the '078 patent"); U.S. Design Patent No. D569,776 ("the '776 patent"); U.S. Design Patent No. D602,834 ("the '834 patent"); U.S. Design Patent No. D582,328 ("the '328 patent"); U.S. Design Patent No. D542,726 ("the '726 patent"); U.S. Design Patent No. D604,221 ("the '221 patent"); U.S. Design Patent No. D570,760 ("the '760 patent"); U.S. Design Patent No. D544,823 ("the '823 patent"); U.S. Design Patent No. D486,437 ("the '437 patent"); U.S. Design Patent No. D562,207 ("the '207 patent"); U.S. Design Patent No. D635,904 ("the '904 patent"); U.S. Design Patent No. D618,150 ("the '150 patent"); U.S. Design Patent No. D585,802 ("the '802 patent"); U.S. Design Patent No. D532,733 ("the '733 patent"); U.S. Design Patent No. D572,646 ("the '646 patent"); U.S. Design Patent No. D578,949 ("the '949 patent"); U.S. Design Patent No. D638,772 ("the '772 patent"); U.S. Design Patent No. D522,946 ("the '946 patent"); U.S. Design Patent No. D638,766 ("the '766 patent"); and U.S. Design Patent No. D610,516 ("the '516 patent"); and U.S. Trademark Registration No. 3,614,891 ("the '891 mark"); U.S. Trademark Registration No. 4,423,458 ("the '458 mark"); U.S. Trademark Registration No. 3,305,055 ("the '055 mark"); U.S. Trademark Registration No. 1,807,353 ("the '353 mark"); U.S. Trademark Registration No. 1,660,727 ("the '727 mark"); U.S. Trademark Registration No. 657,386 ("the '386 mark"); U.S. Trademark Registration No. 285,557 ("the '557 mark"); U.S. Trademark Registration No. 4,076,271 ("the '271 mark"); U.S. Trademark Registration No. 3,224,584 ("the '584 mark"); U.S. Trademark Registration No. 3,309,265 ("the '265 mark"); U.S. Trademark Registration No. 2,876,643 ("the '643 mark"); U.S. Trademark Registration No. 2,909,827 ("the '827 mark"); U.S. Trademark Registration No. 2,654,240 ("the '240 mark"); U.S. Trademark Registration No. 2,712,292 ("the '292 mark"); U.S. Trademark Registration No. 2,028,111 ("the '111 mark"); U.S. Trademark Registration No. 2,699,216 ("the '216 mark"); U.S. Trademark Registration No. 2,716,842 ("the '842 mark"); U.S. Trademark Registration No. 2,599,862 ("the '862 mark"); U.S. Trademark Registration No. 2,028,107 ("the '107 mark"); U.S. Trademark Registration No. 4,669,601 ("the '601 mark"); U.S. Trademark Registration No. 3,103,610 ("the '610 mark"); U.S. Trademark Registration No. 2,028,112 ("the '112 mark"); U.S. Trademark Registration No. 3,100,860 ("the '860 mark"); U.S. Trademark Registration No.

2,026,254 ("the '254 mark"); U.S. Trademark Registration No. 2,815,926 ("the '926 mark"); U.S. Trademark Registration No. 3,221,423 ("the '423 mark"); U.S. Trademark Registration No. 2,227,526 ("the '526 mark"); U.S. Trademark Registration No. 3,019,109 ("the '109 mark"); U.S. Trademark Registration No. 2,837,833 ("the '833 mark"); and U.S. Trademark Registration No. 2,529,332 ("the '332 mark"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, June 13, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine;

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain passenger vehicle automotive wheels by reason of infringement of the claims of the '211 patent, the '330 patent, the '776 patent, '726 patent, the '760 patent, the '823 patent, the '150 patent, the '733 patent, and the '772 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain passenger vehicle automotive wheels by reason of infringement of the '891 mark, the '458 mark, the '055 mark, the '353 mark, the '727 mark, the '386 mark, the '557 mark, '271 mark, the '584 mark, the '265 mark, the '643 mark, the '827 mark, the '240 mark, the '216 mark, the '842 mark, the '833 mark, and the '332 mark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Daimler AG, Mercedesstrasse 137, 70327 Stuttgart, GERMANY

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

A–Z Wheels LLC d/b/a UsaRim/UsaRim.com/Eurotech Wheels, 8925 Carroll Way, Suites C/D, San Diego, CA 92121
Galaxy Wheels & Tires, LLC, 8925 Carroll Way, Suites C/D, San Diego, CA 92121
Infobahn International, Inc. d/b/a Infobahn/Eurotech/Eurotech Luxury, Wheels/Eurotech Wheels/UsaRim, 8925 Carroll Way, Suites C/D, San Diego, CA 92121
Amazon.com, Inc., 410 Terry Avenue North, Seattle, WA 98109
A Spec Wheels & Tires LLC d/b/a A SPEC Wheels & Tires, 2035 American Avenue, Hayward, CA 94545
American Tire Distributors Holdings, Inc., 12200 Herbert Wayne Court, Suite 150, Huntersville, NC 28078
American Tire Distributors, Inc., 12200 Herbert Wayne Court, Suite 150, Huntersville, NC 28078
Onyx Enterprises Int'l, Corp. d/b/a CARiD.COM, 1 Corporate Drive Suite C, Cranbury, NJ 08512
O.E. Wheel Distributors, LLC, 1916 72nd Drive East, Sarasota, FL 34243
Powerwheels Pro, LLC, 1058 Highland Road, Waterford, MI 48328
Trade Union International Inc. d/b/a Topline, 4651 State Street, Montclair, CA 91763

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 13, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–14337 Filed 6–16–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On June 13, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Idaho in the lawsuit entitled *United States* v. *Owyhee Construction, Inc. et al.* Civil Action No. 3:15–cv–00088–EJL.

The United States initiated this civil action on behalf of the United States Environmental Protection Agency against Owyhee Construction, Inc. ("Owyhee") and the Riverside Water and Sewer District ("RWSD") (collectively "Settling Defendants") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, to recover response costs incurred by the United States in connection with the release and threatened release of hazardous substances at the Orofino Asbestos Superfund Site in Orofino, Clearwater County, Idaho (the "Site").

Under the terms of the proposed Consent Decree, the Settling Defendants will be responsible for making a lump sum payment of $475,000 and Owyhee will make payments totaling $48,000 to be paid quarterly in installments over two years as reimbursement for the past response costs incurred by the United States during the removal actions. The Consent Decree contains a covenant not to sue for past and certain future costs and response work at the Site under Sections 106 and 107 of CERCLA.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Owyhee Construction, Inc. et al.* D.J. Ref. No. 90–11–3–10860. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $5.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–14321 Filed 6–16–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council (WIAC)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) (Pub. L. 113–128), which amends section 15 of the Wagner-Peyser Act of 1933 (29 U.S.C. 491–2), notice is hereby given that the WIAC will hold its inaugural meeting on July 13 and 14, 2016. The meeting will take place at the Bureau of Labor Statistics (BLS) Training and Conference Center in Washington, DC. The WIAC is being established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.) and will act in accordance with the applicable provisions of FACA and its implementing regulation at 41 CFR 102–3. Portions of this meeting will be open to the public.

DATES: The meeting will take place on Wednesday, July 13 and Thursday, July 14, 2016, between 9:00 a.m. and 4:00 p.m. The meeting will be open to the public during the following times: Wednesday, July 13, 2016, 10:30 a.m. to 4:00 p.m.; Thursday, July 14, 2016, 9:00 a.m. to 4:00 p.m. Public statements and requests to address the Advisory Council must be postmarked by June 29, 2016.

ADDRESSES: The meeting will be held at the BLS Janet Norwood Training and Conference Center, Rooms 7 and 8, in the Postal Square Building at 2 Massachusetts Ave. NE., Washington, DC 20212. Mail public statements and requests to address the advisory council to Mr. Steven Rietzke, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW., Washington, DC 20210 or transmit by email to *Rietzke.Steven@dol.gov.* See **SUPPLEMENTARY INFORMATION** for additional guidelines.

FOR FURTHER INFORMATION CONTACT: Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW., Washington, DC 20210; Telephone: 202–693–3912. Mr. Rietzke is the Designated Federal Officer for the WIAC.

SUPPLEMENTARY INFORMATION:

Background: The WIAC is an important component of the Workforce Innovation and Opportunity Act. The WIAC is a Federal Advisory Committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The purpose of the WIAC is to provide recommendations to the Secretary of Labor, working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) The evaluation and improvement of the nationwide workforce and labor market information system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) Studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at *www.doleta.gov/wioa/wiac/.*

Purpose: The purpose of this meeting is to welcome the Council members, provide background briefings on Council activities and issues confronting the nationwide and statewide workforce and labor market information systems, and facilitate development of the Council's activities to accomplish the objectives established in its Charter.

Agenda: Beginning at 10:30 a.m. on July 13, 2016, the meeting will be open to the public and the Committee will discuss a number of items related to the administrative functioning of the Committee, including a review of the WIAC charter and objectives, and issues related to Committee operations. After the lunch break, brief remarks from Federal Committee members and other relevant Federal officials will be made. The discussion will focus on current initiatives, challenges, and opportunities related to nationwide and statewide workforce and labor market information systems.

The meeting will resume at 9:00 a.m. on July 14, 2016. The second day will continue the previous day's conversation through facilitated discussions among Committee members, including but not limited to focusing on key areas for further examination and the need for subcommittees. Time for public comment or statements for the record will be made available on each day; please see the final agenda on the Web site for exact times.

The full agenda for the meeting, and changes or updates to the meeting, will be posted on the WIAC's Web page, *www.doleta.gov/wioa/wiac/*.

Attending the meeting: BLS is located in the Postal Square Building, the building that also houses the U.S. Postal Museum, at 2 Massachusetts Ave. NE., Washington, DC. You must have a picture ID to be admitted to the BLS offices at Postal Square Building, and you must enter through the Visitors' Entrance. The BLS Visitors' Entrance is on First Street NE., mid-block, across from Union Station.

Public statements: Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **ADDRESSES** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **ADDRESSES** section with the subject line "July WIAC Meeting Public Statements" by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of the meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information (PII) in your public statement.

Requests to address the Advisory Council: Members of the public or representatives of organizations wishing to address the Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Council chair. Individuals with disabilities, or others, who need special accommodations, should indicate their needs along with their request.

Portia Wu,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2016–14336 Filed 6–16–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for America's Promise Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Funding Opportunity Announcement.

Funding Opportunity Number: FOA–ETA–16–12.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $100 million in grant funds authorized under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended (codified at 29 U.S.C. 3224a) for America's Promise Job-driven Grant Program.

Under this Funding Opportunity Announcement (FOA), DOL will award grants through a competitive process to organizations to create or expand regional partnerships between employers, economic development, workforce development, community colleges, training programs, K–12 education systems, and community-based organizations that make a commitment to provide a pipeline of workers to fill existing job openings. DOL expects to fund approximately 20–40 grants, with individual grant amounts ranging from $1 million to $6 million. The grant period for performance for this FOA is 48 months, including all necessary implementation and start-up activities.

The complete FOA and any subsequent FOA amendments in connection with this funding opportunity are described in further detail on ETA's Web site at *https://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov/*. The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this funding opportunity.

DATES: The closing date for receipt of applications under this announcement is August 25, 2016. Applications must be received no later than 4 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Ariam Ferro, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3968.

Signed June 9, 2016, in Washington, DC, by

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2016–14286 Filed 6–16–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Extension of Request for Public Comment Regarding Revising the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Request for comments.

SUMMARY: This notice reopens and extends the period for comments on the Notice of Initial Determination published in the **Federal Register** on December 2, 2014, proposing to add carpets from India to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (the EO List) (77 FR 59418). The EO List is required by Executive Order 13126 (Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor), and is developed in accordance with the "Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Under 48 CFR Subpart 22.15 and E.O. 13126." The EO List identifies products, by their country of origin, that the Department of Labor, in consultation and cooperation with the Departments of State and Homeland Security (collectively, the Departments), has a reasonable basis to believe might have been mined, produced or manufactured by forced or indentured child labor. In addition to proposing to add a one new item, carpets from India, to the EO List, the initial determination invited comments from the public.

Since the initial comment period, additional comments have been submitted to and gathered by the Departments. This notice reopens and extends the comment period on the initial determination, including all of the information that was submitted and gathered during the comment period and after it closed. The comments have raised issues as to whether the evidence is sufficient at this time to satisfy our criteria for adding carpets from India to the EO list; however, a final determination will not be made until the public has had an opportunity to comment on the initial determination and the evidence in the record. The Departments will consider all public comments prior to publishing a final determination revising the EO List.

DATES: Information should be submitted to the Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) via one of the methods described below by no later than 5 p.m. July 15, 2016.

To Submit Information, or For Further Information, Contact: Information submitted to the Department should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4843 (this is not a toll free number). Comments, identified as "Docket No. DOL–2014–0004," may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.

Facsimile (fax): OCFT, at 202–693–4830.

Mail, Express Delivery, Hand Delivery, and Messenger Service (2 copies): Rachel Rigby/Charita Castro, at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue NW., Room S–5317, Washington, DC 20210.

Email: EO13126@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Initial Determination

On December 2, 2014, the Department of Labor (DOL), in consultation and cooperation with the Department of State (DOS) and the Department of Homeland Security (DHS and collectively, the Departments), published a Notice of Initial Determination in the **Federal Register** proposing to add carpets from India to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (the EO List) (77 FR 59418). The initial determination can be accessed on the Internet at *https://federalregister.gov/a/2014-27624*

The initial determination invited public comment until January 30, 2015, on whether carpets from India should be included in a revised EO List, as well as any other issues related to the fair and effective implementation of Executive Order 13126. During the comment period, three public comments were submitted. Following the conclusion of the public comment period, nineteen additional comments were submitted to or gathered by the Departments. All comments are available for public viewing at *http://www.regulations.gov* (reference Docket ID No. DOL–2014–0004).

The initial determination and the public comments can also be obtained from: Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–4843; fax: (202) 693–4830.

II. Information Sought

DOL is reopening and extending the period for public comments on the initial determination proposing to revise the EO List to add carpets from India. DOL invites the public to comment on whether carpets from India should be included in the revised EO List, including comments on all of the information submitted or gathered since the publication of the initial determination. The comments have raised issues as to whether the evidence is sufficient at this time to satisfy our criteria for adding carpets from India to the EO list; however, a final determination will not be made until the public has had an opportunity to comment on the initial determination and the evidence in the record. To the extent possible, comments provided should address the criteria for inclusion of a product on the EO List contained in the Procedural Guidelines discussed below. The information that has been received on this good is available at *http://www.regulations.gov* (reference Docket ID No. DOL–2014–0004).

In conducting research for the initial determination, the Departments considered a wide variety of materials based on their own research and originating from other U.S. Government agencies, foreign governments, international organizations, non-governmental organizations (NGOs), U.S. Government-funded technical assistance and field research projects, academic and other independent research, media, and other sources. The Department of State and U.S. embassies and consulates abroad also provided important information by gathering data from contacts, conducting site visits and reviewing local media sources. In developing the proposed revision to the EO List, the Departments' review focused on information concerning the use of forced or indentured child labor that was available from the above sources.

As outlined in the Procedural Guidelines, several factors are weighed in determining whether or not a product should be placed on the EO List: The nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate sources; whether the information involved more than an isolated incident; and whether recent and credible efforts are being made to address forced or indentured child labor in a particular country or industry (66 FR 5351).

This notice is a general solicitation of comments from the public. All submitted comments will be made a part of the public record and will be available for inspection at *http://www.regulations.gov.*

Following receipt and consideration of comments on the addition to the EO List of carpets from India, DOL, in consultation with DOS and DHS, will issue a final determination in the **Federal Register**. The Departments intend to continue to review the EO List periodically to add and/or remove products as warranted by the receipt of new and credible information.

III. Background

The first EO List was published on January 18, 2001 (66 FR 5353). The EO List was subsequently revised on July 20, 2010 (75 FR 42164); on May 31, 2011 (76 FR 31365); on April 3, 2012 (77 FR 20051); and on July 23, 2013 (78 FR 44158).

Executive Order 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was "the policy of the United States Government . . . that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor." Pursuant to Executive Order 13126, and following public notice and comment, DOL published in the January 18, 2001, **Federal Register** a list of products, identified by their country of origin, that DOL, in consultation and cooperation with DOS and the Department of the Treasury (relevant responsibilities now within DHS), had a reasonable basis to believe might have been mined, produced or manufactured by forced or indentured child labor. (66 FR 5353).

Pursuant to Section 3 of Executive Order 13126, the Federal Acquisition Regulatory Council published a final rule in the **Federal Register** on January 18, 2001, providing, amongst other requirements, that federal contractors who supply products that appear on the EO List must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. (48 CFR Subpart 22.15).

DOL also published on January 18, 2001, "Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor" ("Procedural Guidelines"), which provide for maintaining, reviewing, and, as appropriate, revising the EO List. (66 FR 5351). The Procedural Guidelines provide that the EO List may be revised either through consideration of submissions by individuals or on the initiative of DOL, DOS and DHS. In either event, when proposing to revise the EO List, DOL must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the EO List. DOL, DOS and DHS consider all public comments prior to the publication of a final determination of a revised EO List.

IV. Definitions

Under Section 6(c) of EO 13126: "Forced or indentured child labor" means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Signed at Washington, DC, this 13th day of June, 2016.

Carol Pier,

Deputy Undersecretary for International Affairs.

[FR Doc. 2016–14407 Filed 6–16–16; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption 1988–59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Prohibited Transaction Class Exemption 1988–59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 18, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1210-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Prohibited Transaction Class Exemption (PTE) 1988–59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans, information collection. This PTE is applicable to residential mortgage financing arrangements involving employee benefit plans and permits an employee benefit plan to enter into specified transactions involving residential mortgage loans with parties in interest without violating the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA), provided that plan meets specified conditions. Among other conditions, the plan must maintain records pertaining to covered transactions for the duration of the loan and must make the records available upon request to plan trustees, investment managers, participants and beneficiaries, and DOL and Internal Revenue Service agents. ERISA section 408 authorizes this information collection. *See* 29 U.S.C. 1108.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0095.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0095. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Prohibited Transaction Class Exemption 1988–59, Residential Mortgage Financing Arrangements Involving Employee Benefit Plans.

OMB Control Number: 1210–0095.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,000.

Total Estimated Number of Responses: 11,000.

Total Estimated Annual Time Burden: 900 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 10, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–14285 Filed 6–16–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Transition Assistance Program (TAP) Email/Text Pilot Study: Survey To Assess Use of AJC Services and Collect Feedback

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed Information Collection Request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 16, 2016.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Janet Javar, Chief Evaluation Office, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Contact Janet Javar by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) provides career readiness support for Service Members separating from the military and transitioning to civilian employment. Prior to separation, DOL provides the Transition Assistance Program (TAP) Employment Workshop and encourages separating Service Members to connect with an American Job Center (AJC). After separation, DOL provides career and employment services for recently separated veterans at AJC locations throughout the United States. AJCs provide support services for recently separated Service Members, including help with building and tailoring a resume, one-on-one career counseling, and translating military experience and skills to civilian careers.

This data collection is part of an evaluation designed to improve DOL's understanding of how emails and/or text reminders could be used to encourage Army soldiers in the E1 to E6 pay grades to take advantage of free career and employment services provided by AJCs. This may inform future enhancements to the military's transition process in the TAP Employment Workshop to improve civilian employment among veterans. Army soldiers in the E1 to E6 pay grades represent a group that may experience longer unemployment after separation, may be less likely to take advantage of TAP services or meet Career Readiness Standards, and may stand to benefit more significantly from the services offered by AJCs than soldiers at higher ranks. The Army soldiers in the E1 to E6 pay grades who are participating in the TAP Employment Workshop will receive both pre-separation and post-separation reminders by email, text, or both (depending on the soldier's selected preference). The reminders may contain general and specific information about AJC services, a link to the AJC locator, and how to schedule an appointment with an AJC representative. This study will involve the collection of data through a web-based survey of the Army veterans who participated in the TAP Employment Workshop and agreed to be a part of the study.

II. Desired Focus of Comments

The Department of Labor is soliciting comments concerning the data collection described above. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

At this time, the Department of Labor is requesting clearance for the web-based survey of recently separated Army veterans as part of the TAP Email/Text Pilot Study.

Type of review: New information collection request.

OMB Control Number: 1205–0NEW

Affected Public: Individuals (recently separated Army veterans who participated in the Department of Labor's Transition Assistance Program Employment Workshop).

ESTIMATED BURDEN HOURS

Respondents of wed-based survey	Estimated total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden hours
Individuals (recently separated Army veterans who participated in the Transition Assistance Program Employment Workshop).	1,452	Twice	2,904	0.167	485
Totals	1,452		2,904		485

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

Sharon Block,

Principal Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2016–14408 Filed 6–16–16; 8:45 am]

BILLING CODE 4510–HX–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

ACTION: Notice; correction.

SUMMARY: The Legal Services Corporation (Corporation) published a document in the **Federal Register** on June 6, 2016, announcing the June 17, 2016 meeting of the Finance Committee of the Corporation's Board of Directors. The document contained an error in one of the agenda items.

FOR FURTHER INFORMATION CONTACT: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Correction

In the **Federal Register** of June 6, 2016, in FR Doc. 2016–13404, on page 36351, in the first column, under the heading "Matters to be Considered," correct the third item to read:

3. Public comment regarding LSC's fiscal year 2018 budget request

Dated: June 15, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–14466 Filed 6–15–16; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–042)]

Notice of Intent To Grant Exclusive Research License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive research license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, research only license in the United States to evaluate the invention described and claimed in U.S. Patent Application No. 15/055,247; NASA Case No. KSC–13907 entitled "Controlled Release Materials for Anti-Corrosion Agents," to SynMatter, LLC, having its principal place of business at 16914 Deer Oak Lane, Orlando, Florida 32828. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive, research only license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive research license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive, research only license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, NASA John F. Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Shelley Ford, Patent Attorney, Office of the Chief Counsel, NASA John F. Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2016–14347 Filed 6–16–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Call Report and Credit Union Profile

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a revision of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before August 16, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0004.

Title: NCUA Call Report and Profile.

Form: NCUA Forms 5300 and 4501A.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to make financial reports to the NCUA. Section 741.6 prescribes the method in which federally insured credit unions must submit this information to NCUA. NCUA Form 5300, Call Report, is used to file quarterly financial and statistical data and NCUA Form 4501A, Credit Union Profile, is used to obtain non-financial data relevant to regulation and supervision such as the names of senior management and volunteer officials, and are reported through NCUA's on-line portal, Credit Unions Online.

This information collection is being revised to remove data elements associated with the reporting of Credit Union Service Organizations (CUSO). In early 2016, reporting of CUSOs was conducted separately from the Call Report and Profile through the new CUSO Registry portal (OMB No. 3133–0149). To eliminate duplicate reporting and reduce the burden associated with this collection, NCUA is removing the CUSO identification section from the Call Report and reporting of CUSO usage from the Profile.

Type of Review: Revision of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 6,021.

Estimated Number of Responses per Respondent: 4.

Estimated Annual Responses: 24,084.

Estimated Burden Hours per Response: 6.

Estimated Total Annual Burden Hours: 144,504.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 14, 2016.

Dated: June 14, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–14395 Filed 6–16–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 18, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314–3428 or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0039.

Type of Review: Reinstatement, with change, of a previously approved collection.

Title: Borrowed Funds from Natural Persons, 12 CFR 701.38.

Abstract: Section 701.38 of the NCUA regulations grants federal credit unions the authority to borrow funds from a natural person as long as they maintain a signed promissory note which includes the terms and conditions of maturity, repayment, interest rate, method of computation and method of payment; and the promissory note and any advertisements for borrowing have clearly visible language stating that the note represents money borrowed by the credit union and does not represent shares and is not insured by the National Credit Union Insurance Fund (NCUSIF). NCUA will use this information to ensure a credit union's natural person borrowings are in compliance and address all regulatory and safety and soundness requirements.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 935.

OMB Number: 3133–0125.

Title: Appraisals, 12 CFR 722.

Abstract: NCUA Regulation § 722 implements a statutory requirement that appraisals used in real estate transactions be made in writing and meet certain standards. This collection of information is associated with the requirement that credit unions retain a copy of the written assessment for real estate transactions over $250,000. Each federally insured credit union uses the information in determining whether and upon what terms to enter into a federally related transaction, such as making a loan secured by real estate. In addition, NCUA uses this information in its examinations of federally insured credit unions to ensure that extensions of credit by the federally-insured credit union that are collateralized by real estate are undertaken in accordance with appropriate safety and soundness principles.

Type of Review: Reinstatement without change of a previously approved collection.

Affected Public: Private sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 280,000.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 8, 2016.

Dated: June 14, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–14362 Filed 6–16–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–029 and 52–030; NRC–2008–0558]

Duke Energy Florida, LLC; Levy Nuclear Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding the application of Duke Energy Florida, LLC (DEF) for combined licenses (COLs) to construct and operate two units (Units 1 and 2) in Levy County, Florida. This mandatory hearing will concern safety and environmental matters relating to the requested COLs.

DATES: The hearing will be held on July 28, 2016, beginning at 9:00 a.m. Eastern Daylight Time. For the schedule for submitting pre-filed documents and deadlines affecting Interested Government Participants, see Section VI of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID 52–029 and 52–030 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *NRC's Electronic Hearing Docket:* You may obtain publicly available documents related to this hearing online at *http://www.nrc.gov/about-nrc/regulatory/adjudicatory.html.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Denise McGovern, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission hereby gives notice that, pursuant to Section 189a of the Atomic Energy Act of 1954, as amended (the Act), it will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding DEF's[1] July 28, 2008, application for COLs under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), to construct and operate two new units (Units 1 and 2) in Levy County, Florida *http://www.nrc.gov/reactors/new-reactors/col/levy/documents.html#application.* This mandatory hearing will concern safety and environmental matters relating to the requested COLs, as more fully described below. Participants in the hearing are not to address any contested issues in their written filings or oral presentations.

II. Evidentiary Uncontested Hearing

The Commission will conduct this hearing beginning at 9:00 a.m., Eastern Daylight Time on July 28, 2016, at the Commission's headquarters in Rockville, Maryland. The hearing on these issues will continue on subsequent days, if necessary.

III. Presiding Officer

The Commission is the presiding officer for this proceeding.

IV. Matters To Be Considered

The matter at issue in this proceeding is whether the review of the application by the Commission's staff has been adequate to support the findings found in 10 CFR 52.97 and 10 CFR 51.107. Those findings that must be made for each COL are as follows:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

The Commission will determine whether (1) the applicable standards and requirements of the Act and the Commission's regulations have been met; (2) any required notifications to other agencies or bodies have been duly made; (3) there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations; (4) the applicant is technically and financially qualified to engage in the activities authorized; and (5) issuance of the license will not be inimical to the common defense and security or the health and safety of the public.

Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

The Commission will (1) determine whether the requirements of Sections 102(2)(A), (C), and (E) of NEPA and the applicable regulations in 10 CFR part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined licenses should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

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[1] The application was initially submitted by Progress Energy Florida, Inc. The applicant changed its name in April 2013 following a July 2012 corporate merger between Progress Energy, Inc. and Duke Energy Corporation.

V. Schedule for Submittal of Pre-Filed Documents

No later than July 7, 2016, unless the Commission directs otherwise, the staff and the applicant shall submit a list of its anticipated witnesses for the hearing.

No later than July 7, 2016, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The staff previously submitted its testimony on June 10, 2016.

The Commission may issue written questions to the applicant or the staff before the hearing. If such questions are issued, an order containing such questions will be issued no later than June 24, 2016. Responses to such questions are due July 7, 2016, unless the Commission directs otherwise.

VI. Interested Government Participants

No later than June 27, 2016, any interested State, local government body, or affected, Federally-recognized Indian tribe may file with the Commission a statement of any issues or questions to which the State, local government body, or Indian tribe wishes the Commission to give particular attention as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system[2] by the deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the Staff and applicant, its inquiries at the oral hearing and its decision following the hearing. The Commission may also request, prior to July 14, 2016, that one or more particular States, local government bodies, or Indian tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian tribe in the pre-hearing filings described above. The decision of whether to request the presence of a representative of a State, local government body, or Indian tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that the representative should be prepared to address.

States, local governments, or Indian tribes should be aware that this evidentiary hearing is separate and distinct from the NRC's contested hearing process. Issues within the scope of contentions that have been admitted or contested issues pending before the Atomic Safety and Licensing Board or the Commission in a contested proceeding for a COL application are outside the scope of the uncontested proceeding for that COL application. In addition, although States, local governments, or Indian tribes participating as described above may take any position they wish, or no position at all, with respect to issues regarding the COL application or the NRC staff's associated environmental review that do fall within the scope of the uncontested proceeding (*i.e.,* issues that are not within the scope of admitted contentions or pending contested issues), they should be aware that many of the procedures and rights applicable to the NRC's contested hearing process due to the inherently adversarial nature of such proceedings are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including States, local governments, or Indian tribes, seeking to file contentions of their own) and 10 CFR 2.315(c) (for interested States, local governments, and Indian tribes seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect the right of a State, local government, or Indian tribe to participate in the separate contested hearing process.

Dated at Rockville, Maryland, this 13th day of June, 2016.

For the Nuclear Regulatory Commission.

Rochelle C. Bavol,

Acting, Secretary of the Commission.

[FR Doc. 2016–14383 Filed 6–16–16; 8:45 am]

BILLING CODE 7590–01–P

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[2] The process for accessing and using the agency's E-filing system is described in the December 8, 2008, notice of hearing that was issued by the Commission for this proceeding. See Progress Energy Florida, Inc.; Application for the Levy County Nuclear Power Plant Units 1 and 2; Notice of Order, Hearing, and Opportunity To Petition for Leave To Intervene 73 FR 74532. Participants who are unable to use the electronic information exchange (EIE), or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to *hearingdocket@nrc.gov.*

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–71371–SP; ASLBP No. 16–947–01–SP–BD01]

Alexander Abrahams; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,*10 CFR 2.103(b), 2.300, 2.309, 2.313(a), 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Alexander Abrahams (Denial of Reactor Operator License)

This proceeding concerns a demand for hearing pursuant to 10 CFR 2.103(b)(2) from Alexander Abrahams challenging a May 5, 2016 letter from the Nuclear Regulatory Commission that denied his application for a reactor operator license for the Reed College Reactor Facility.

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

E. Roy Hawkens, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Issued at Rockville, Maryland, this 13th day of June 2016.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2016–14363 Filed 6–16–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

International Product Change—GEPS 6 Contracts

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services 6 Contracts to the Competitive Products List.

DATES: *Effective date:* June 17, 2016.

FOR FURTHER INFORMATION CONTACT: Kyle Coppin, (202) 268–2368.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on May 31, 2016, it filed with the Postal Regulatory Commission a Request of The United States Postal Service to add Global Expedited Package Services 6 Contracts to the Competitive Products List. Documents are available at *www.prc.gov,* Docket Nos. MC2016–149 and CP2016–188.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–14375 Filed 6–16–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78057; File No. SR–NYSE–2016–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rule 6A To Exclude the Physical Area Within Fully Enclosed Telephone Booths Located in 18 Broad Street From the Definition of Trading Floor

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 6A (“Trading Floor”) to exclude an area in 18 Broad Street that has fully enclosed telephone booths from the definition of Trading Floor. The proposed rule change is available on the Exchange’s Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NYSE Rule 6A (“Trading Floor”) to exclude from the definition of “Trading Floor” the area within fully enclosed telephone booths located in 18 Broad Street.

The Exchange currently defines “Trading Floor”[3] in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room,” the “Blue Room” and the “Garage.”[4] Rule 6A also specifies that the Exchange’s Trading Floor does not include areas designated by the Exchange where NYSE Amex-listed options are traded, commonly known as the “Extended Blue Room,” which, for the purposes of the Exchange’s Rules, are referred to as the “NYSE Amex Options Trading Floor.”[5] The Exchange proposes to add sub-paragraph numbering to Rule 6A, so that the first paragraph of the rule would be sub-paragraph (a) and the second paragraph would be sub-paragraph (b). As proposed, Rule 6A(a) would define the term “Trading Floor,” and proposed Rule 6A(b) would define which physical areas are excluded from the definition of “Trading Floor.”

The Exchange first proposes to amend Rule 6A to reflect the renaming of the physical area formerly known as the “Garage.” That area has been renamed the “Buttonwood Room” and the Exchange proposes to reflect this change in Rule 6A. Rule 6A also currently defines Trading Floor to include areas commonly known as the “Blue Room” and also refers to an area commonly referred to as the “Extended Blue Room.”[6] The Exchange recently closed those areas and moved all member organizations, member organization employees and NYSE Amex Options trading activities that were previously housed in these areas to the Buttonwood Room. To reflect this change, the Exchange proposes to delete references to the Blue Room and Extended Blue Room from Rule 6A and replace them with a reference to the Buttonwood Room.

With respect to proposed Rule 6A(b), the current rule already excludes the NYSE Amex Options Trading Floor from the definition of “Trading Floor.” To reflect the change to the names of the trading rooms and the relocation of the NYSE Amex Options Trading Floor to the Buttonwood Room, the Exchange proposes to amend Rule 6A(b) to refer to the Buttonwood Room when referring to the NYSE Amex Options Trading Floor. Accordingly, the proposed rule would exclude from the definition of Trading Floor the designated areas in the Buttonwood Room where NYSE Amex-listed options are traded which, for the purposes of the Exchange’s Rules, would continue to be referred to as the “NYSE Amex Options Trading Floor.”[7] This proposed change does not make any substantive changes and reflects only the location change for NYSE Amex Options. This proposal would have no impact on the physical location of NYSE Amex Options personnel as they would remain in their current location in the Buttonwood Room.

The Exchange next proposes to amend Rule 6A(b) to exclude an additional area from the definition of Trading Floor. As proposed, the Exchange proposes to exclude from the definition of Trading

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Access to the Trading Floor is restricted at each entrance by turnstiles and only authorized visitors, members or member firm employees are permitted to enter.

[4] *See* NYSE Rule 6A; *see also* Securities Exchange Act Release No. 59479 (Mar. 2, 2009), 74 FR 10325 (Mar. 10, 2009) (SR–NYSE–2009–23) (Notice of filing adopting NYSE Rule 6A and explaining that the proposed definition of “Trading Floor” will provide a more accurate description of the physical areas of the Floor where trading is actually conducted).

[5] *Id.* The term “Trading Floor” is distinct from the term “Floor.” The term “Floor” means the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations. *See* NYSE Rule 6.

[6] The Blue Room and Extended Blue Room are references to trading spaces previously utilized by member firm employees and NYSE Amex Options at 20 Broad Street.

[7] As when the NYSE Amex Options Trading Floor was located in the Extended Blue Room, in the Buttonwood Room, the Exchange has erected physical barriers between the NYSE Amex Options Trading Floor and any Exchange member organizations or Exchange personnel that are also located in the Buttonwood Room.

Floor the area within fully enclosed telephone booths located in 18 Broad Street at the Southeast wall of the Trading Floor. The telephone booths would be located in a vestibule area adjacent to 18 Broad Street elevator banks that provide access to the Trading Floor and that are separated from the equity trading areas of the Main Room by approximately forty (40) feet and a partial physical barrier. As such, while inside the telephone booths, there is not any visual or auditory access to activities conducted at the trading posts or by Floor Brokers.

These telephone booths would be designed for use by DMMs, but could be used by anyone on the Trading Floor. Because the telephone booths would be excluded from the definition of Trading Floor, there would not be any restrictions on the use of personal cell phones by DMMs while in these telephone booths, nor would there be restrictions on which cellular phone a Floor broker may use while in the telephone booth. For example, currently, a DMM who is not on the Trading Floor, *i.e.*, is located outside the restricted-access areas of the Floor, may use a personal cell phone to communicate with an issuer. As proposed, because the area within the telephone booth would similarly be excluded from the definition of Trading Floor, a DMM could use a personal cell phone while inside the telephone booth to communicate with an issuer. A DMM's use of a personal cell phone while within the telephone booth would be no different than if the DMM used his or her personal cell phone to communicate with an issuer from the DMM's office off the Exchange or while outside the restricted-access areas of the Floor, *i.e.*, outside the Trading Floor.

While in the telephone booth, the DMM would not have access to any time and place information that he or she may have at the trading post. The proposed location of these telephone booths would ensure the privacy of any conversations, for a number of reasons: the closest location of any Floor Broker operations, which also contain privacy barriers, is approximately forty (40) feet from the proposed location of the telephone booths; there are high arching walls with limited line and sight vision separating the telephone booths from any trading posts on the Trading Floor; and lastly, the telephone booths are fully enclosed so any conversation that would occur would take place behind closed doors. The Exchange believes that the combination of these visual and acoustical barriers would substantially eliminate the risk that any conversations occurring inside the telephone booth could be overheard. In addition, it substantially eliminates the risk that an individual having a telephone conversation while inside the telephone booth would be able to hear or see anything at a trading post where securities trade.

To the extent that a DMM would use the telephone booths to communicate off the Trading Floor, current Exchange restrictions governing the protection of material non-public information would continue to apply. Rule 98 ("Operation of a DMM Unit") currently provides that that when a Floor-based employee of a DMM unit moves to a location off of the Trading Floor of the Exchange or if any person that provides risk management oversight or supervision of the Floor-based operations of the DMM unit is aware of Floor-based non-public order information, he or she shall not (1) make such information available to customers, (2) make such information available to individuals or systems responsible for making trading decisions in DMM securities in away markets or related products, or (3) use any such information in connection with making trading decisions in DMM securities in away markets or related products.[8] The proposed rule change is not intended to circumvent the restrictions prescribed in Rule 98 applicable to DMMs. Accordingly, DMMs would continue to be subject to the restrictions against the misuse of material non-public information prescribed in Rule 98. To that end, any communication between a DMM and an issuer would be limited to information that is in the public domain and not deemed material, non-public information. Except for the requirement to protect against the misuse of material non-public information set forth in Rule 98, Exchange rules do not have any restrictions on DMMs communicating with issuers from locations off of the Trading Floor. To the contrary, an important element of the DMM role is its relationship with issuers.

Moreover, DMMs would continue to be subject to supplementary material .30 to Rule 36 ("DMM Unit Post Wires") ("Rule 36.30"), which permits a DMM to maintain at their posts telephone lines and wired or wireless devices that are registered with the Exchange to communicate with personnel at the off-Floor offices of the DMM, the DMM's clearing firm, or with persons providing non-trading related services to the DMM. The Exchange is not proposing any changes to Rule 36 and, therefore, the current restrictions in Rule 36 would remain applicable and would not be affected by the proposed amendment to the definition of Trading Floor in Rule 6A. The proposed amendment to Rule 6A would allow the Exchange to delineate an area inside the telephone booth as being off the Trading Floor where a DMM may use a personal cell phone, which would not be subject to Rule 36.30.

Because the proposed telephone booths would still fall within the broader definition of Floor under Exchange rules, the Exchange will retain jurisdiction in this area to regulate conduct that is inconsistent with Exchange Rules and the federal securities laws and rules thereunder.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934[9] (the "Act"), in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change would exclude from the definition of Trading Floor fully-enclosed telephone booths that are located on the perimeter of the Trading Floor, approximately 40 feet away from any trading operations. The Exchange believes that excluding these telephone booths from the definition of Trading Floor is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because the visual and acoustic lines while within the fully-enclosed telephone booths to any trading activities are extremely limited. The Exchange believes that the combination of these visual and acoustical barriers would substantially eliminate the risk that any conversations occurring inside the telephone booth could be overheard. In addition, it substantially eliminates the risk that an individual having a telephone conversation while inside the telephone booth would be able to hear or see anything at a trading post where securities trade. Accordingly, because being inside the telephone booths would be akin to being off of the Trading Floor, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to treat the areas within the telephone booths similarly to areas located outside of the Trading Floor.

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[8] *See* NYSE Rule 98(c)(3)(C). Rule 98, however, permits a DMM that needs to take on a larger risk profile in a security because of a proposed floor broker transaction to discuss the proposed transaction, which would be deemed material non-public information, with the DMM's risk manager located off of the Trading Floor without violating Exchange rules or federal securities laws.

[9] 15 U.S.C. 78f(b)(5).

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it will reduce the burdens on the ability of a DMM to communicate with an issuer. Currently, a DMM may use a personal cell phone to communicate with an issuer outside of the Trading Floor, but short of going to an office at a separate physical location, there are limited areas where a DMM may have a private conversation. The telephone booths would provide a physical space in which a DMM could have a private conversation with an issuer while at the same time remaining subject to existing Rule 98 requirements to protect against the misuse of material, non-public information. The Exchange further believes that updating the references in the Exchange rules to reflect the correct use of the Exchange Trading Floor would eliminate any potential confusion among investors and other market participants on the Exchange as to areas of the Trading Floor where certain conduct is, or is not, permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any issues relating to competition. Rather, the proposed rule change would ease burdens on the ability of a DMM to have a private conversation with an issuer by providing a physical location that would be excluded from the definition of Trading Floor that is private.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–31, and should be submitted on or before July 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14320 Filed 6–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78050; File No. SR–NASDAQ–2016–081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Limited WebLink ACT or Nasdaq Workstation Post Trade Fee Tier Under Rule 7015(e)

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7015(e) to eliminate the limited WebLink ACT or Nasdaq Workstation Post Trade ("Post Trade") fee tier. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on June 1, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's access services fees at Rule 7015(e) to eliminate the limited Post Trade fee tier. WebLink ACT [3] and Nasdaq Workstation [4] provide connectivity to the FINRA/NASDAQ TRF ("TRF"). Under Rule 7015(e), the Exchange provides members with the Post Trade service, which is a front-end interface with the TRF for trade reporting and historical trade reporting research.

Currently, the Exchange provides two subscription tiers: (1) A full functionality subscription for a monthly fee of $525; and (2) a subscription limited to an average of 20 transactions [5] per day each month for a monthly fee of $275. In light of decreased subscribership and increased fixed costs associated with offering Post Trade, the Exchange is proposing to eliminate the limited subscription fee tier. The Exchange will continue to offer the full functionality subscription fee tier.[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that applying the full Post Trade fee tier to all subscribers, including current limited tier subscribers, is reasonable because, as described below, the per-subscriber costs associated with providing the limited subscription tier have increased significantly. Nasdaq incurs the same fixed costs in offering Post Trade, regardless of the number of transactions reported. These fixed costs have increased while the overall number of subscribers to Post Trade has declined due to consolidation among members and stagnant growth in the industry overall.

Furthermore, the Exchange incurs additional expense in monitoring the number of individual subscriber transaction reports and calculating a daily average per month for subscribers to the limited Post Trade offering to ensure that their usage is consistent with the 20 transaction per day limitation. Coupled with decreased subscribership to the limited tier in comparison to the full functionality tier,[9] the relative cost of offering the limited Post Trade subscription has increased significantly in relation to the full functionality subscription tier.

Instead of increasing all Post Trade fees, the Exchange has determined to offer only the unlimited subscription, but with no increase to that fee. Therefore, current subscribers to the limited Post Trade fee tier will have to either subscribe to the full functionality tier at the higher fee or choose an alternative means to report their transactions to the TRF, of which there are several. For example, a subscriber may develop its own in-house system to replicate the Post Trade functionality, or alternatively use a third party order management system to provide similar functionality.

The Exchange believes that applying the full Post Trade fee tier to all subscribers, including current limited tier subscribers, is an equitable allocation and is not unfairly discriminatory because current subscribers to the limited offering will have reasonable alternatives, which include subscribing to the full functionality Post Trade offering at a higher fee but with an unlimited number of transaction reports during a month, developing their own internal system, or using a third party order management system.

As noted above, the Exchange has observed a reduction in the number of subscribers to Post Trade, which has led to a smaller pool of subscribers among which it can spread the fixed costs associated with offering the service. With respect to the limited subscription tier, the costs have increased significantly due to the small number of subscribers in contrast to the full functionality subscription tier.

Thus, the Exchange must either increase the limited functionality fee significantly to a point that it is near the fee of the full functionality offering, or eliminate the limited service altogether. As explained, offering the limited Post Trade offering is costlier to the Exchange because it must track the average number of transactions used by a subscriber during the month to ensure that it is within the limits required by the rule. Consequently, the Exchange is proposing to eliminate the option that is costlier to the Exchange, while keeping the fee of the remaining full functionality Post Trade subscription tier the same.

The Exchange also notes that, although current subscribers to a limited Post Trade subscription will pay more under the full functionality subscription, they will receive an unlimited number of transaction reports per month in return. Thus, all subscribers to the service will receive the same functionality for the same price, and the Exchange will have the same cost per subscriber in offering the service.

Last, the Exchange notes that the service is voluntary and members will continue to have the option to subscribe to the full functionality fee tier or choose an alternative. For these reasons, the Exchange believes that the proposed elimination of the limited offering fee is an equitable allocation and is not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive.

In such an environment, the Exchange must carefully assess the potential impact that increasing a fee for a service may have on the overall number of subscribers, balanced against the need to cover the costs associated with offering the service and also deriving a profit therefrom. As noted above, this service is completely voluntary and market participants have connectivity options for reporting to the TRF other than the Exchange. Thus, market participants are able to readily choose a third party offering if the Exchange's does not satisfy their needs or perform the functionality in-house, rendering the degree to which fee changes to this service may impose any burden on competition to be extremely limited.

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[3] WebLink ACT is a browser-based application that electronically facilitates trade reporting and clearing functions for trades reported to the FINRA/Nasdaq Trade Reporting Facility.

[4] The Nasdaq Workstation provides, among other things, a web-based interface with Nasdaq's trade reporting system, ACT.

[5] For purposes of the service, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

[6] Current subscribers to the limited subscription will be automatically subscribed to the full subscription effective June 1, 2016, unless their subscription is cancelled prior to that date.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] The Exchange notes that less than ten percent of subscribers to Post Trade choose the limited fee tier.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–081. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–081, and should be submitted on or before July 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14312 Filed 6–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Cascade Technologies Corp., Echo Automotive, Inc., and Vision Industries Corp.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Cascade Technologies Corp. ("CSDT[1]") (CIK No. 1324344), a Wyoming corporation located in Beverly Hills, California with a class of securities registered with the Commission pursuant to Securities Exchange Act of 1934 ("Exchange Act") Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2012. On April 15, 2014, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to CSDT requesting compliance with its periodic filing requirements which was delivered. As of June 8, 2016, the common shares of CSDT were quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had seven market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Echo Automotive, Inc. ("ECAU") (CIK No. 1453420), a revoked Nevada corporation located in Scottsdale, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended March 31, 2014. On November 30, 2015, Corporation Finance sent a delinquency letter to ECAU requesting compliance with its periodic filing requirements but ECAU did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual) ("Commission Issuer Address Rules"). As of June 8, 2016, the common stock of ECAU was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Vision Industries Corp. ("VIICQ") (CIK No. 1405424), a dissolved Florida corporation located in Long Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended June 30, 2014. On September 15, 2015, Corporation Finance sent a delinquency letter to VIICQ requesting compliance with its periodic filing requirements but VIICQ did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of June 8,

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

[1] The short form of each issuer's name is also its stock symbol.

2016, the common stock of VIICQ was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 15, 2016, through 11:59 p.m. EDT on June 28, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–14473 Filed 6–15–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78048; File No. SR–NSX–2016–03]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule To Adopt a Market Data Revenue Sharing Program

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2016, National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 16.1, Fee Schedule, to adopt a market data revenue ("MDR") sharing program, add a definition of the term Average Daily Volume ("ADV"), and make ministerial changes to the Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 16.1, Fee Schedule, with the goal of maximizing the effectiveness of its business model and continuing to provide Equity Trading Permit ("ETP") Holders[3] a cost-effective execution venue. The Exchange is proposing to implement the MDR sharing program as a part of the Fee Schedule, add a definition of "ADV" and make ministerial changes to the Fee Schedule.

The Exchange's proposed MDR sharing program provides for the issuance of a credit to ETP Holders for executing trades on the Exchange within two defined volume tiers. The credit is equal to a specified percentage of the monthly market data revenue received by the Exchange that is attributable to such ETP Holder's displayed quoting and trading activity in securities priced at $1.00 or greater on the Exchange. If, over the course of a calendar month, an ETP Holder executes an ADV of greater than or equal to 500,000, but less than 1,500,000, shares of securities priced $1.00 or greater, then the ETP Holder will receive a credit of 25% of the market data revenue that the Exchange received that calendar month that was attributable to that ETP Holder's executions and displayed quotes in securities priced $1.00 or greater. If, over the course of a calendar month, the ETP Holder executes an ADV of greater than or equal to 1,500,000 shares of securities priced $1.00 or greater, then the ETP Holder will receive a credit of 50% of the market data revenue that the Exchange received that calendar month that was attributable to that ETP Holder's executions and displayed quotes in securities priced $1.00 or greater.

In connection with the MDR sharing program, the Exchange is further proposing to amend the Fee Schedule to add Explanatory Note 4, which defines "ADV" as the average number of shares per day that an ETP Holder has executed on the Exchange in NMS securities priced at $1.00 or greater when the Exchange is open for trading during the calendar month. The Exchange will not count a day as part of the month, for the purpose of calculating ADV, if the Exchange is not continuously open for trading during Regular Trading Hours[4] on that day. For example, if the Exchange is open for abbreviated hours on a given day (*e.g.,* until 1:00 p.m. on the day after the Thanksgiving Day holiday) or if the Exchange experiences a technological problem that renders the Exchange inoperative for part of the day, that day will not be factored in to the total number of days in the month when calculating ADV. If an ETP Holder is only eligible to trade on the Exchange for a portion of the month, the Exchange will calculate the ADV based on the number of days during the calendar month that the ETP Holder was eligible to trade. The Exchange notes that, for purposes of the ADV computation, an ETP Holder's total trading activity on the Exchange in securities priced at $1.00 or greater will be utilized, including executions resulting from non-displayed orders. Explanatory Note 4 will clarify how the Exchange proposes to calculate ADV for the purposes of the market data revenue sharing program, described below.

The Exchange proposes to add Explanatory Note 3 to the Fee Schedule to provide further information regarding MDR sharing.[5] Explanatory Note 3 makes explicit that, assuming the minimum ADV thresholds are achieved, an ETP Holder will receive an MDR credit (in such percentage as is specified above) of the MDR attributable to the ETP Holder's executions and displayed quotes in securities priced $1.00 or greater. Explanatory Note 3 also establishes that to the extent market data revenue from Tape "A", "B" or "C" securities transactions is subject to any adjustment by the securities information processor ("SIP"), credits provided to the ETP Holder in connection with the ETP Holder's quoting and trading in the security that is subject to MDR adjustments may be adjusted by the Exchange;[6] however, the Exchange will adjust credits to the ETP Holder only if the adjustment would be greater than or equal to $250. Amounts less than $250 would be considered *de minimis* and would be an exception, based the Exchange's belief that the monetary value of such an adjustment is outweighed by the associated administrative burden both to the Exchange and to the recipient ETP Holder.[7] Lastly, Explanatory Note 3 establishes that MDR credits will be paid on a quarterly basis.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5 defines "ETP" as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

[4] NSX Rule 1.5R.(1) defines the term "Regular Trading Hours" as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time."

[5] The Exchange has previously implemented other iterations of market data revenue sharing programs pursuant to filings with the Commission and such prior MDR sharing programs shared up to 50% of trade and quote market data revenue. *See* Securities Exchange Act Release No. 66958 (May 10, 2012), 77 FR 28909 (May 16, 2012) (SR–NSX–2012–07); Securities Exchange Act Release No. 61103 (December 3, 2009), 74 FR 65576 (December 10, 2009) (SR–NSX–2009–07); Securities Exchange Act Release No. 58935 (November 13, 2008), 73 FR 69703 (November 19, 2008) (SR–NSX–2008–19); Securities Exchange Act Release No. 56890 (December 4, 2007), 72 FR 70360 (December 11, 2007) (SR–NSX–2007–13).

The Exchange also proposes to make the ministerial change of moving Explanatory Notes 1 and 2 from their current position at the end of the sections pertaining to transaction fees and rebates, to the end of the Fee Schedule where they would be more logically placed.

Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of an Information Circular and will post the Fee Schedule and the instant rule filing on the Exchange's Web site, *www.nsx.com*.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general and, in particular, Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed rule change is also consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange not permit unfair discrimination between customers, issuers, brokers, or dealers, and be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system.[11]

The Exchange submits that the MDR sharing program is equitable and reasonable, as required by Section 6(b)(4) of the Act. The Exchange believes that the MDR sharing program's volume thresholds are reasonable because they have been set at levels that make the MDR sharing program cost effective for both the Exchange and ETP Holders and, through the issuance of MDR credits, will incentivize Exchange participants to add liquidity to the Exchange. This will result in greater price discovery and price improvement for ETP Holders. The Exchange's process for adjusting credits based on adjustments made by the SIP is also reasonable as it will ensure that the credits received by ETP Holders are accurate. Setting a threshold for adjusting credits in an amount equal to or greater than $250 is reasonable in that it takes into account the administrative costs to the Exchange and ETP Holder of processing *de minimis* adjustments.

The MDR sharing program is equitable because each ETP Holder will be subject to the same tiers and thresholds for the MDR sharing program. Additionally, each ETP Holder has the same opportunity to enter and execute any amount of non-displayed and displayed liquidity on the Exchange in order to receive an MDR credit. Thus, the Fee Schedule provides for a streamlined and equitable MDR sharing program which, the Exchange believes, will operate to encourage increased quoting and trading by ETP Holders on the Exchange.

The Exchange further submits that the proposed MDR sharing program satisfies the requirements of Section 6(b)(5) of the Act in that it does not permit unfair discrimination between customers, issuers, brokers, or dealers, is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system. Under the proposed changes to the Fee Schedule, all ETP Holders executing orders on the Exchange will be subject to the same MDR sharing structure, and such changes are thereby designed to meet the requirements of the Section 6(b)(5) that the rules of the Exchange not permit unfair discrimination among ETP Holders and their customers.

The Exchange submits that the proposal will promote just and equitable principles of trade by providing a streamlined MDR sharing program that will potentially attract more volume on the Exchange in displayed orders in securities priced at $1.00 and above. Incentivizing ETP Holders to add displayed liquidity at levels that would result in the MDR credit would also operate to lower the cost to those ETP Holders of executing trades on the Exchange by allowing them to share in the MDR derived from their activity. Moreover, the Exchange believes that incentivizing market participants to post and to access the liquidity on the NSX Book would inure to the benefit of all market participants seeking greater and better execution opportunities. In this regard, the proposed Fee Schedule will promote just and equitable principles of trade and operate to remove impediments to and perfect the mechanism of a free and open market and a national market system under Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change amends the Fee Schedule, which applies uniformly to all ETP Holders accessing the Exchange. Moreover, the proposed MDR credits will enhance rather than burden competition by operating to incentivize increased liquidity and improve execution quality on the Exchange through reasonable and equitably allocated economic incentives.

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[6] Pursuant to the revenue allocation rules of Regulation NMS, the SIPs continuously calculate market data revenue attributable to each exchange on a security by security basis and distribute revenue to the exchanges quarterly. Fluctuations from quarter to quarter in quoting and trading on the Exchange, on a security by security basis, relative to other exchanges affects the results of the SIPs' continuous calculations of the MDR distribution for both the current quarter and prior quarters in the calendar year. The SIPs may then adjust the MDR distributions that the SIPs made to the Exchange for prior quarters in the calendar year, and the Exchange will adjust an ETP Holder's MDR credit received as appropriate, provided that such an adjustment would be in an amount of $250 or greater.

[7] The Exchange notes that in the past its Fee Schedule has included a similar *de minimis* exception for applying credits to ETP Holders for MDR adjustments in amounts less than $250. *See* Securities Exchange Act Release No. 66958 (May 10, 2012), 77 FR 28909 (May 16, 2012) (SR–NSX–2012–07).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] The Exchange notes that in the past it has offered, as a part of its Fee Schedule, similar MDR sharing programs. *See* fn. 5, *supra*.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4.[13] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2016–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2016–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2016–03 and should be submitted on or before July 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14311 Filed 6–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78045; File No. SR–ICEEU–2016–008]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Clearance of Containerised White Sugar Futures Contracts

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2016, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the change is to modify the ICE Clear Europe Delivery Procedures in connection with the launch by the ICE Futures Europe market of new containerised white sugar futures contracts that will be cleared by ICE Clear Europe.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule amendments is to modify the ICE Clear Europe Delivery Procedures in connection with the launch by the ICE Futures Europe market of new containerised white sugar futures contracts that will be cleared by ICE Clear Europe (the "Containerised White Sugar Contracts"). ICE Clear Europe does not otherwise propose to amend its clearing rules or procedures in connection with the Containerised White Sugar Contracts.

The amendments adopt a new Part BB to the Delivery Procedures, applicable to the Containerised White Sugar Contracts. The amendments provide, among other matters, specifications for delivery of white sugar under a Containerised White Sugar Contract, including relevant definitions and a detailed delivery timetable for the contracts. The amendments also address invoicing and payment for delivery. The revised procedures also set out various documentation requirements for the relevant parties, and provide procedures for rejection of delivery documentation under applicable contract terms.

2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act[5] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[6] Specifically, the amendments are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[7] The Containerised White Sugar Contracts have similar characteristics to other softs futures contracts currently cleared by ICE Clear Europe, and ICE Clear Europe believes that its existing financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such products (and to address physical delivery under such contracts).

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[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] 15 U.S.C. 78q–1.

Specifically, ICE Clear Europe believes that it will be able to manage the risks associated with acceptance of the Containerised White Sugar Contracts for clearing and physical delivery in such contracts. The Containerised White Sugar Contracts present a similar risk profile to other ICE Futures Europe softs contracts currently cleared by ICE Clear Europe, and ICE Clear Europe believes that its existing risk management and margin framework is sufficient for purposes of risk management of the Containerised White Sugar Contracts and related deliveries. Similarly, ICE Clear Europe believes that its existing systems are appropriately scalable to handle the Containerised White Sugar Contracts, which are generally similar from an operational perspective to other ICE Futures Europe softs contracts currently cleared by ICE Clear Europe.

For the reasons noted above, ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act and regulations thereunder applicable to it.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting the amendments to the Delivery Procedures in connection with the listing of a new contract, the Containerised White Sugar Contracts, for trading on the ICE Futures Europe market. ICE Clear Europe believes that such contracts will provide additional opportunities for interested market participants to engage in trading activity in the sugar market. ICE Clear Europe does not believe the adoption of the Delivery Procedures amendments would adversely affect access to clearing for clearing members or their customers, or otherwise adversely affect competition in clearing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(4)(ii)[9] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2016–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2016–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2016–008 and should be submitted on or before July 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14307 Filed 6–16–16; 8:45 am]

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[6] 17 CFR 240.17Ad–22.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78052; File No. SR–BatsEDGX–2016–22]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Penny Pilot Program

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the EDGX Options Market ("EDGX Options") to extend through December 31, 2016, the Penny Pilot Program ("Penny Pilot") in options classes in certain issues ("Pilot Program") previously approved by the Commission.[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Penny Pilot, which was previously approved by the Commission, through December 31, 2016, and to provide revised dates for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.*, beginning December 1, 2015, and ending May 31, 2016).

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on June 30, 2016. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed in order to continue the Pilot Program, which is a competitive response to analogous programs offered by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The rules of EDGX Options, including rules applicable to EDGX Options' participation in the Penny Pilot, were approved on August 7, 2015. *See* Securities Exchange Act Release No. 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (SR–EDGX–2015–18). EDGX Options commenced operations on November 2, 2015.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule

Continued

pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGX–2016–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–22 and should be submitted on or before July 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14319 Filed 6–16–16; 8:45 am]

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change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 5.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78056; File No. SR–OCC–2016–004]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Related to the Adoption of an Options Exchange Risk Control Standards Policy

June 13, 2016.

I. Introduction

On March 4, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new Options Exchange Risk Control Standards Policy and revise its Schedule of Fees to impose on clearing members a fee of two cents per cleared options contract (per side) executed on an options exchange that did not demonstrate sufficient risk controls designed to meet the proposed set of principles-based risk control standards. The proposed rule change was published for comment in the **Federal Register** on March 18, 2016.[3] The Commission received six comment letters on the proposed rule change.[4] On April 27, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77358 (March 14, 2016), 81 FR 14921 (March 18, 2016) (File No. SR–OCC–2016–004) ("Notice").

[4] *See* Letters from Mark Dehnert, Managing Director, Goldman Sachs & Co., and Kyle Czepiel, Co-Chief Executive Officer, Goldman Sachs Execution & Clearing, L.P. (collectively, "Goldman Sachs"), dated March 28, 2016, to Secretary, Commission ("Goldman Sachs Letter"); Lisa J. Fall, President, BOX Options Exchange ("BOX"), dated April 6, 2016, to Brent J. Fields, Secretary, Commission ("BOX Letter"); James G. Lundy, Associate General Counsel, ABN AMRO Clearing Chicago LLC ("AACC"), dated April 8, 2016, to Brent J. Fields, Secretary, Commission ("AACC Letter"); Ellen Greene, Managing Director, Securities Industry and Financial Markets Association ("SIFMA"), dated April 12, 2016, to Robert W. Errett, Deputy Secretary, Commission ("SIFMA Letter"); Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC ("ISE"), dated April 20, 2016, to Brent J. Fields, Secretary, Commission("ISE Letter"); and Edward T. Tilly, Chief Executive Officer, Chicago Board Options Exchange, Inc. ("CBOE"), dated April 20, 2016, to Brent J. Fields, Secretary, Commission ("CBOE Letter").

II. Description of the Proposed Rule Change

OCC proposes to adopt a new Options Exchange Risk Control Standards Policy ("Policy") for addressing the potential risks arising from erroneous trades executed on an options exchange that has not demonstrated the existence of certain risk controls that are consistent with a set of principles-based risk control standards developed by OCC. Among other things, the proposed rule change would establish risk control standards and require each options exchange to submit an annual certification, attesting that it has sufficient risk controls consistent with OCC's Policy.

The proposed rule change also would revise OCC's Schedule of Fees, in accordance with the proposed Policy, to charge and collect from clearing members a fee of two cents per cleared options contract (per side) ("Fee") executed on an options exchange that has not demonstrated to OCC that it has implemented sufficient controls designed to meet OCC's proposed Policy. The proposed rule change would require that any funds collected from the Fee be retained as earnings and, as such, be eligible for use for clearing member defaults under Article VIII, Section 5(d) of OCC's By-Laws,[7] but would prohibit such funds from being used for any other purpose. These funds would be available for use by OCC, subject to the unanimous approval from its Class A and B common stock shareholders, in accordance with Article VIII, Section 5(d) of OCC's By-Laws.[8]

Risk Control Standards

The proposed Policy includes the risk control standards to which an options exchange must attest in order to avoid the Fee charged on trades executed on its own platform. According to OCC, the proposed risk control standards were developed by OCC in consultation with the options exchanges and are designed to provide flexibility for each options exchange to develop specific risk controls that best suit its own marketplace while still guarding against risks related to erroneous transactions. The proposed Policy would include the following categories of risk controls: "Price Reasonability Checks,"[9] "Drill-Through Protections,"[10] "Activity-Based Protections,"[11] and "Kill-Switch Protections."[12]

Certification Process

Under the proposed rule change, each options exchange would certify to OCC that it has implemented risk controls consistent with OCC's Policy using a designed form, which must be signed by an executive officer. OCC would then evaluate each options exchange's risk controls for compliance with OCC's Policy by reviewing each options exchange's certification and supporting materials, including, but not be limited to, its proposed rule changes filed with the Commission, approved rules, information circulars, and written procedures.

If OCC[13] is unable to determine that an options exchange has risk controls sufficient to meet the Policy, OCC would furnish the options exchange with a concise written statement of the reasons as soon as reasonably practicable and the options exchange would have 30 calendar days following receipt of the concise written statement to present further evidence of its sufficient risk controls to OCC. After submission of any further evidence by the options exchange, OCC would have 30 days to conduct a second review and make a recommendation to OCC's Risk Committee[14] regarding whether the options exchange has sufficient risk controls. Within 30 days of receiving the recommendation, OCC's Risk Committee would review the recommendation and the options exchange's supporting materials, as appropriate, to determine whether the options exchange has risk controls sufficient to meet the Policy. OCC would furnish the options exchange with a concise written statement of the Risk Committee's determination and the reasons for such determination as soon as reasonably practicable following the Risk Committee's review.

On June 30 of each year (following the effective date of the proposed rule change), OCC would post a notice to its Web site to which clearing members (but not the general public) have access, with respect to each options exchange, whether: (1) The options exchange has implemented sufficient risk controls to meet the Policy ("Compliant Options Exchange"); (2) OCC was unable to determine the options exchange has sufficient risk controls that meet the Policy ("Non-Compliant Options Exchange"); or (3) a certification has not been submitted by the options exchange.

Collection of Proposed Fee

Beginning on the first business day that is at least 60 days after OCC posts such notice, OCC would charge and collect the Fee for trades executed on a Non-Compliant Options Exchange. The Fee would continue to be charged to and collected from clearing members, and the notice would remain posted on OCC's Web site to which clearing members (but not the general public) have access, until the options exchange is able to demonstrate that its risk controls satisfy the Policy.

Under the proposed rule change, any funds collected from the Fee would be retained as earnings and, as such, be eligible for use for clearing member defaults under Article VIII, Section 5(d) of OCC's By-Laws,[15] but such funds would be prohibited from being used for any other purpose. These funds would be available for use by OCC, subject to the unanimous approval from its Class A and B common storck shareholders, in accordance with Article VIII, Section 5(d) of OCC's By-Laws.[16]

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[5] *See* Securities Exchange Act Release No. 77720 (April 27, 2016), 81 FR 26609 (May 3, 2016).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Under Article VIII, Section 5(d) of OCC's By-Laws, usage of current or retained earnings may be considered after the defaulting clearing member's margin has been exhausted, and it may be used to reduce in whole or in part the pro rata contribution otherwise made from the Clearing Fund to cover the loss.

[8] *See* Article VIII, Section 5(d).

[9] According to OCC, Mandatory Price Reasonability Checks would prevent limit orders, complex orders, and market maker quotes from being entered and displayed on an options exchange if the price on such order or quote is outside a defined threshold set in relation to the current market price or National Best Bid or Offer ("NBBO").

[10] OCC states that Drill-Through Protections are closely related to Price Reasonability Checks and would require all orders, including market orders, limit orders, and complex orders, to be executed within pre-determined price increments of the NBBO.

[11] OCC explains that Activity-Based Protections would extend an options exchange's Risk Controls to factors beyond price and are most commonly designed to address risks associated with a high frequency of trades in a short period of time. OCC notes that Activity-Based Protections may address the maximum number of contracts that may be entered as one order, the maximum number of contacts that may be entered or executed by one firm over a certain period of time, and the maximum number of messages that may be entered over a certain period of time.

[12] According to OCC, Kill-Switch Protections would provide options exchanges, and their market participants, with the ability to cancel existing orders and quotes and/or block new orders and quotes on an exchange-wide or more tailored basis (e.g., symbol specific, by Clearing Member, etc.) with a single message to the options exchange after established trigger events are detected. According to OCC, a trigger event may include a situation where a market participant is disconnected from an options exchange due to an abnormally large order or manual errors in the system by a market participant causing multiple erroneous trades to occur.

[13] OCC does not specify in the proposed rule change which part of OCC would be responsible for evaluating certifications.

[14] OCC's Risk Committee is chaired by a public Director and it does not currently have an options exchange representative. In the event OCC's Risk Committee has an exchange representative at some time in the future, such exchange representative would be recused from a decision on the appeal of a determination of an options exchange's compliance with the Policy.

Exception and Escalation Processes

The proposed Policy also provides that, on rare occasions, OCC may grant exceptions to the Policy to appropriately address immediate business issues and provides for an escalation process to report breaches of the Policy.[17]

III. Summary of Comment Letters

The Commission received six comment letters in response to the proposed rule change.[18] Five comment letters were written in support of the proposed rule change and one comment letter from BOX, objecting to the proposed rule change. The supporting comment letter from ISE also responded to BOX's objections.

A. Supporting Comments

Five commenters, Goldman Sachs, AACC, SIFMA, CBOE and ISE, submitted comment letters in support of the proposed rule change. All of these commenters express concern regarding the risk that erroneous trades may pose to the listed-options market and its participants. Each of these commenters support effective risk management controls by an options exchange to minimize the risk of erroneous trades and the attendant consequences. Recognizing the role OCC plays in the listed-options market, these commenters state that OCC's proposed rule change would minimize the likelihood of erroneous trades occurring and reduce risk[19] by incentivizing options exchanges to create risk controls.[20] One commenter states that because clearing members guarantee the clearance and settlement of trades by their clients, it is critical for clearing member risk management purposes that there be robust and centralized risk controls at the options exchanges.[21]

In addition to expressing general support for the objective of the proposed rule change, commenters also support specific aspects of the proposed rule change. One commenter supports OCC's principles-based approach and states that such approach would allow options exchanges to develop specific risk controls in each category best-suited for their markets.[22] Another commenter describes the Policy's certification requirement as "exceedingly reasonable" and notes that this requirement is consistent with certification requirements in other areas of the financial services industry, including those instituted by the Commission and other self-regulatory organizations, such as Financial Industry Regulatory Authority.[23] According to this commenter, OCC's proposed approach for the certification and review process would provide reasonable steps for the options exchanges to communicate and escalate issues raised by OCC in connection with the evaluation of an options exchange.[24]

Two commenters reference the relationship between the proposed rule change and the existing regulatory framework. One commenter claims that the proposed rule change complements Rule 15c3–5 ("Market Access Rule")[25] under the Act and Regulation Systems Compliance and Integrity ("Regulation SCI")[26] by providing additional and "much needed layers of protections" at the options exchange level.[27] The other commenter similarly suggests that the proposed rule change, in conjunction with the Market Access Rule, will "advance a strong, centralized structure of risk controls."[28]

Finally, one commenter provides several recommendations that it believes would further improve the proposed rule change. In particular, this commenter suggests that the proposed rule change be amended to specify that the options exchanges make their risk controls visible and transparent to members, trading permit holders, and customers.[29] For the "backup alternative messaging systems" that are a part of the Kill Switch Protections, the commenter recommends that OCC clarify in the proposed rule change that the options exchanges would need to provide the methodology, access protocols, controls, and management of such systems.[30] The same commenter urges that the proposed rule change be clarified to require options exchanges to bear the full cost of the Fee to prevent the options exchanges from passing the cost along to their member firms, trading permit holders, and/or customers.[31]

B. Objecting Comments

One commenter, BOX, raises several objections to the proposed rule change.

Authority To Prescribe Risk Control for Options Exchanges

BOX questions whether OCC has the authority generally to prescribe risk controls for options exchanges under the Act.[32] BOX asserts that it is unable to find a provision in the Act or otherwise that grants OCC with the authority to regulate the options exchanges. Moreover, BOX contends that because the U.S. Congress gave the Commission express authority under the Act to regulate the national securities exchanges, including options exchanges, any industry-wide requirements imposed on the options exchanges should be mandated by the Commission, not OCC.

BOX also asserts that it is the Commission's role, through the rule filing process under Section 19(b) of the Act and the rules and regulations thereunder, to determine whether the rules and procedures of the individual options exchanges meet the requirements of Section 6 of the Act. BOX argues that allowing OCC to require options exchanges to have certain procedures and rules would give OCC the authority to determine the sufficiency of an options exchange's rules thus giving OCC the ability to act as a "de facto regulator" over the options exchanges and, more broadly, the options markets.[33]

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[15] *See* Article VIII, Section 5(d).

[16] *Id.*

[17] OCC does not provide additional information in the proposed rule change regarding its process for granting exceptions and which part of OCC would be responsible for granting such exceptions, aside from identifying who must approve exceptions and be notified exceptions to the Policy.

[18] *See supra* note 4.

[19] *See* CBOE Letter, *supra* note 4, at 1; SIFMA Letter, *supra* note 4, at 2.

[20] *See* Goldman Letter, at 2 (stating that OCC's rule will provide appropriate and necessary incentives to create necessary risk controls at all Options Exchanges.); SIFMA Letter, at 2 (stating that the proposed rule change provides strong incentives for Options Exchanges to comply with risk control standards in the Policy since an exchange's non-compliance will be "punitive" to clearing members transacting on that exchange.); AACC Letter, *supra note 4,* at 1 (supporting the use of a fee to incentivize Options Exchanges to adopt and maintain risk controls that are consistent with the risk control standards in the Policy and the use of the fee to provide additional funds for OCC to manage the increased risk and to cover the potential losses caused by erroneous or violative transactions); ISE Letter, *supra* note 4, at 4 (stating that the Fee was added to provide "strong encouragement to the options exchanges to comply with the Policy).

[21] *See* Goldman Letter, *supra* note 4, at 2.

[22] *See* CBOE Letter, *supra* note 4, at 2.

[23] *See* AACC letter, *supra* note 4, at 2.

[24] *Id.*

[25] *See* 17 CFR 240.15c3–5.

[26] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (Regulation SCI Adopting Release).

[27] *See* AACC Letter, *supra* note 4, at 1.

[28] *See* SIFMA Letter, *supra* note 4, at 2.

[29] *See* AACC Letter, *supra* note 4, at 2.

[30] *Id.*

[31] *Id.* at 3.

[32] *See* BOX Letter, *supra* note 4, at 2.

[33] *Id.* at 2–3.

Burden on Competition

BOX states that the proposed rule change would impose burdens on competition that OCC fails to justify. First, according to BOX, even if OCC deems an options exchange to be in compliance with OCC's Policy, a substantial burden would be placed on individual options exchanges, including, but not limited to, expending initial resources to ensure that an exchange has the required risk controls in place and devoting resources annually to ensure that the exchange is continually compliant with OCC's risk control standards. BOX contends that this burden would be especially high for smaller exchanges.

Second, BOX states that the potential application of an increased clearing fee to a single exchange could have devastating effects on that exchange's ability to compete in the "highly competitive environment" in the options market where any increase in fees can make "a world of difference." [34] BOX attributes this to the "direct effect it will have on the total transaction cost to market participants and the effect it will have on the exchange's revenue." [35] BOX asserts that firms would include the Fee in their determination of where to route trade orders based upon the total transaction costs. As a result, BOX argues that, options exchanges would have to decrease all fees by two cents to "maintain the status quo or be at an economic disadvantage to their competition." [36]

The Proposed Fee is a De Facto Fee on the Options Exchanges Inconsistent With Section 17A(b)(3)(D) of the Act

BOX argues that the charging of an additional fee for transactions occurring on a specific exchange is essentially the same as charging a fee on the exchange directly and is not consistent with Section 17A(b)(3)(D) of the Act. It also questions whether OCC is permitted to charge different fees for clearing transactions based on the executing exchange, which departs from treating all options exchange the same.[37]

C. Comments in Response to BOX

One commenter, ISE, submitted a comment letter to respond to BOX's objections to the proposed rule change.

Authority To Prescribe Risk Control for Options Exchanges

ISE suggests that BOX's arguments regarding whether OCC has the authority to regulate options exchanges lack legal reasoning.[38] ISE argues that the relevant legal question for Commission consideration is whether the Act gives OCC authority to adopt the Policy, which, according to ISE it does. Moreover, ISE contends that, as the sole registered clearing agency for all listed options transactions and a systemically important financial market utility, risks that arise from erroneous transactions are exactly the risks that OCC has authority to address under Section 17A of the Act.[39]

Burden on Competition

ISE states that BOX fails to analyze its burden on competition claim under the governing law. ISE argues that the appropriate questions to pose when evaluating the proposed rule change's burden on competition are: (1) Whether any discriminatory effect on exchanges that do not adopt the Policy is necessary or appropriate; and (2) whether there is a further inappropriate or unnecessary discriminatory effect on smaller exchanges. ISE contends that because OCC has the authority to adopt the Policy, treating transactions on Compliant Options Exchanges more favorably than those on Non-Compliant Options Exchanges is neither inappropriate nor unreasonable. Furthermore, ISE claims that the Act does not contain provisions that require less robust regulations or "special treatment" for smaller exchanges such as BOX.[40]

Charging De Facto Fees on the Exchange

ISE asserts that OCC has the authority to adopt the Fees based on whether an options exchange meets OCC's risk control standards. According to ISE, the relevant question under the Act is whether the adoption of the Policy and imposition of the associated Fee results in unfair discrimination. Although ISE concedes that the proposed rule change "clearly discriminates between exchanges," it contends that requiring clearing members that transact on non-compliant options exchanges to pay higher fees is "eminently fair discrimination." ISE argues that the Policy and Fee are discriminatory only against those options exchanges that have not adopted risk protections that OCC deems necessary for it to discharge its obligations as a registered clearing agency and systemically important financial market utility. ISE also notes that the risk control standards in the proposed rule change were developed in consultation with a working group that included all the options exchanges, including BOX.[41]

ISE contends that BOX's conclusion of the Fee being a de facto fee on options exchanges is grounded in "faulty logic" and "without merit." ISE asserts that an options exchange can avoid having clearing members pay the Fee by complying with the Policy. ISE believes that an options exchange that chooses not to comply with the Policy is making an "economic decision" that non-compliance is economically preferable. Moreover, ISE argues that because an options exchange establishes its own fees, an options exchange that chooses not to incur the cost of compliance can charge lower fees than a competitor that is compliant. Thus, ISE believes that the proposed Fee levels the playing field and avoids "economically rewarding exchanges" that choose to avoid the costs of complying with the Policy.[42]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–OCC–2016–004 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [43] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the proposed rule change, and provide arguments to support the Commission's analysis as to whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[44] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder. Specifically, the Commission believes that OCC's proposed rule change raises questions as to whether it is consistent with: (i) Section 17A(b)(3)(I) of the Act,[45] which provides that clearing agency rules cannot impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act; (ii) Section 17A(b)(3)(D) of the Act,[46] which requires clearing agency rules to provide for the equitable allocation of reasonable dues, fees and other charges among its participants; (iii) Rule 17Ad–22(d)(1) under the Act,[47] which requires clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a well-founded, transparent, and enforceable legal framework; and (iv) Rule 17Ad–22(d)(7) under the Act,[48] which requires clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when a clearing agency establishes links to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis.

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[34] *Id.* at 3–4.

[35] *Id.*

[36] *Id,* at 5. Cf. Another commenter urges that the proposed rule change be clarified to require the options exchanges to bear the full cost of the Fee (or any increased incentive fee) to prevent the options exchanges from passing this increased cost along to their member firms, trading permit holders, and/or customers. See AACC Letter, *supra* note 4, at 3.

[37] *See* BOX Letter, *supra* note 4, at 5.

[38] *See* ISE Letter, *supra* note 4, at 2.

[39] *Id.* at 2.

[40] *Id.* at 3.

[41] *Id.* at 3–4.

[42] *Id.* at 4.

[43] 15 U.S.C. 78s(b)(2)(B).

[44] 15 U.S.C. 78s(b)(2)(B).

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to issues raised by the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Sections 17A(b)(3)(I) and 17A(b)(3)(D) of the Act and Rules 17Ad–22(d)(1) and 17Ad–22(d)(7) under the Act, or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments on or before July 8, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before July 22, 2016. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2016–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_004.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2016–004 and should be submitted on or before July 8, 2016. If comments are received, any rebuttal comments should be submitted on or before July 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14315 Filed 6–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78047; File No. SR–NASDAQ–2016–077]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Certain Fees Charged to Securities Listed on Nasdaq Under the Rule 5700 Series

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate certain fees charged to securities listed on Nasdaq under the Rule 5700 Series.

The text of the proposed rule change is detailed below. Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

5930. Linked Securities, SEEDS, and Other Securities

(a)–(b) No change.

[(c) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to Nasdaq and submit the appropriate form as designated by Nasdaq.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event, including the replacement of, or any significant modification to, the index, portfolio, or Reference Asset underlying a security, shall pay a fee of $5,000 to Nasdaq for each event or change and submit the appropriate form as designated by Nasdaq.]

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[45] 15 U.S.C. 78q–1(b)(3)(I).

[46] 15 U.S.C. 78q–1(b)(3)(D).

[47] 17 CFR 240.17Ad–22(d)(1).

[48] 17 CFR 240.17Ad–22(d)(7).

[49] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

5940. Exchange Traded Products

The fees in this Rule 5940 shall apply to securities listed under the Rule 5700 Series where no other fee schedule is specifically applicable. These securities include, but are not limited to, Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, and NextShares.

(a)–(b) No change.

[(c) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to Nasdaq and submit the appropriate form as designated by Nasdaq.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event, including the replacement of, or any significant modification to, the index, portfolio, or Reference Asset underlying a security, shall pay a fee of $5,000 to Nasdaq for each event or change and submit the appropriate form as designated by Nasdaq.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the fees for record-keeping changes and substitution listing events charged to Linked Securities, SEEDS, Other Securities, and Exchange Traded Products listed on Nasdaq. These fees were adopted in November 2015,[3] and, upon further reflection, Nasdaq has determined to remove them. The proposed rule change would not affect the notice companies must give Nasdaq about record-keeping changes or substitution listing events.[4]

2. Statutory Basis

Nasdaq believes that this proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. This proposal is, in addition, not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[7] Similarly, the Justice Department has noted the intense competitive environment for exchange listings.[8]

Nasdaq believes that the proposed change to eliminate the recently adopted fees for record-keeping changes and substitution listing events charged to securities listed under the Rule 5700 Series is reasonable because it is a competitive response to the fees of other exchanges and issuers' reaction to Nasdaq's fee change.[9]

Nasdaq also believes that the proposed change is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated issuers. While issuers of securities listed under the Rule 5700 Series will not be subject to fees for record-keeping changes and substitution listing events, and other companies will be subject to such fees, this difference is not unfairly discriminatory.

The proposed change merely reinstates a longstanding difference by removing fees that were only recently adopted. This longstanding difference is not unfairly discriminatory because the fees for securities listed under the Rule 5700 Series are generally lower than the listing fees for other types of issuers, reflecting the passive nature of these issuers and the extreme focus on their expenses as a means for various products to compete.[10]

Further, other companies that could pay fees for record-keeping changes and substitution listing events had the option to avoid the fee by electing to be on Nasdaq's all-inclusive annual fee, which eliminates the fees for these events. Securities listed under the Rule 5700 Series do not, at this time, have the option to elect an all-inclusive fee alternative. Nasdaq believes that the lower existing fees, lack of an all-inclusive fee alternative, and competitive considerations are reasonable, fair, and equitable reasons to charge issuers of securities listed under the Rule 5700 Series different fees than other Nasdaq-listed companies, including not charging them for record-keeping changes and substitution listing events.

The proposed change will not impact the resources available to Nasdaq's regulatory program. In that regard, Nasdaq notes that these fees were traditionally not charged to securities listed under the Rule 5700 Series and that there will be no significant decline in expected revenue by eliminating the fees.

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[3] Securities Exchange Act Release No. 76550 (December 3, 2015), 80 FR 76605 (December 9, 2015) (SR–NASDAQ–2015–146).

[4] Rule 5250(e)(3) defines a "Record Keeping Change" as any change to a company's name, the par value or title of its security, its symbol, or a similar change and requires a listed company to provide notification to Nasdaq no later than 10 days after the change. Rule 5005(a)(40) defines a "Substitution Listing Event" as certain changes in the equity or legal structure of a company, including the replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under the Rule 5700 Series (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider). Rule 5250(e)(4) requires a listed company to provide notification to Nasdaq about a Substitution Listing Event no later than 15 calendar days prior to the implementation of the event.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[8] *See* "NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

[9] BATS does not charge a fee for equivalent events. *See* Chapter XIV of the Rules of the BATS Exchange and Rule 14.13 of the BATS Exchange Listing Rules. NYSE Arca charges $2,500 for equivalent events, but has recently modified other listing fees in connection with the listing of Exchange Traded Products. *See* NYSE Arca Equities: Listing Fees; Securities Exchange Act Release No. 77883 (May 23, 2016), 81 FR 33720 (May 27, 2016) (SR–NYSEArca–2016–69).

[10] For example, entry fees for securities listed on the Nasdaq Global Market under the Rule 5700 Series range from $5,000 to $45,000 pursuant to Rules 5930 and 5940, whereas entry fees for other companies listed on the Nasdaq Global Market range from $125,000 to $225,000 pursuant to Rule 5910(a).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The market for listing services is extremely competitive and listed companies may easily list on competing venues if they deem fee levels at a particular exchange to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges.

This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees, but rather reflects the competition between listing venues and will further enhance such competition. For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–077.This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–077 and should be submitted on or before July 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14310 Filed 6–16–16; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of MIT Holding, Inc.; Order of Suspension of Trading

June 15, 2016

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of MIT Holding, Inc. ("MITD[1]") (CIK No. 1367416), a delinquent Delaware corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Securities Exchange Act of 1934 ("Exchange Act") Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2015. Moreover, MITD's Form 10–K for the period ended December 31, 2014 failed to comply with Exchange Act and regulations thereunder because it did not include audited financial statements. Also, the financial statements accompanying MITD's Forms 10–Q for the periods ending March 31, June 30, and September 30, 2015 were not reviewed by an auditor as required by Commission rules. On January 19, 2016, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to MITD requesting compliance with its periodic filing requirements which was delivered. As of June 8, 2016, the common stock of MITD was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets"), had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on June 15, 2016, through 11:59 p.m. EDT on June 28, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–14477 Filed 6–15–16; 4:15 pm]

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[1] The short form of the issuer's name is also its stock symbol.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78051; File No. SR–NASDAQ–2016–078]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees Assessed Under Rule 7015(h)

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing changes to amend the fees assessed under Nasdaq Rule 7015(h).

The changes are being filed for immediate effectiveness and will become operative June 1, 2016.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7015. Access Services

The charges under this rule are assessed by Nasdaq for connectivity to the following systems operated by NASDAQ or FINRA: The Nasdaq Market Center, FINRA Trade Reporting and Compliance Engine (TRACE), the FINRA/NASDAQ Trade Reporting Facility, FINRA's OTCBB Service, and the FINRA OTC Reporting Facility (ORF). The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

(a)–(g) No change.

(h) VTE Terminal Fees

- Each ID is subject to a minimum commission fee of *$500* [250] per month unless it executes a minimum of 100,000 shares.
- Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.
- Each ID that is given web access is subject to a *$500* [250] monthly fee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to increase the fees assessed members under Rule 7015(h) for use of VTE terminals. A VTE terminal is a basic front-end user interface used by Nasdaq members to connect to, and enter orders in, The Nasdaq Market Center. Members using VTE terminals pay the exchanges and market centers separately for data feeds and services provided by Nasdaq, other exchanges or market centers through VTE. Such fees are filed with the SEC and separately assessed by the exchanges and market centers at the same rate irrespective of the method of accessing the data feeds.

These data feeds provide information that is necessary for users to enter orders through VTE. The two fees assessed under Rule 7015(h) relate to optional web access and commissions.

Rule 7015(h) currently assesses monthly a minimum commission fee of $250 per ID for users executing orders totaling less than 100,000 shares per month, and a web access fee of $250 per ID. Nasdaq last increased fees assessed under Rule 7015(h) in 2013 when it raised the fee for access to the terminal via the web from $125 monthly to $250 monthly, and raised the minimum commission fee for users executing orders totaling less than 100,000 shares per month from $125 monthly to $250 monthly.[3] In light of increasing costs, Nasdaq is proposing to increase the fee for access to the terminal via the web from $250 monthly to $500 monthly, and increase the minimum commission fee for users executing orders totaling less than 100,000 shares per month from $250 monthly to $500 monthly.

Nasdaq notes that web connectivity is one option available to Nasdaq users for accessing the VTE terminal. Another option is access through extranet connectivity, where a user contracts directly with a third-party extranet provider and pays fees to that provider. With respect to minimum commission fees, members that execute total orders above the 100,000 share threshold will continue to not be assessed a commission fee.

Based on Nasdaq operation of the VTE since it was acquired from INET, Nasdaq believes that the pricing changes are warranted in order to appropriately balance the decreasing demand for the product with increasing platform, overhead, and technology infrastructure costs. Given that VTE is based on outdated technology and that members have other options for connecting to, and entering orders in, The Nasdaq Market Center, Nasdaq plans to phase out the service in its entirety on or before January 31, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) of the Act,[5] in particular. The Exchange believes it is consistent with Section 6(b)(4) of the Act because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. All similarly situated members are subject to the same fee structure, and access to this Nasdaq service is offered on fair and non-discriminatory terms.

Nasdaq has not increased the fees assessed under Rule 7015(h) since 2013 despite incurring a substantial decrease in subscribership, resulting in higher per-subscription costs as fixed costs are spread among fewer users. Moreover, during this time Nasdaq has also experienced increased costs associated with ongoing support of the VTE platform, which include platform, overhead and technology infrastructure costs. In order to continue to offer this service, Nasdaq must increase the subscriber fees as proposed to cover the overall general increase in cost to support the service, and to cover the increased cost resulting from a smaller subscriber base.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65014 (August 2, 2011), 76 FR 48189 (August 8, 2011) (SR–NASDAQ–2011–101).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

The proposed fees realign the balance of the costs discussed above to the fees received for the service so that it is similar to the ratio at the time of the last fee increase. Nasdaq notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Use of VTE terminals is entirely optional and members can avail themselves of numerous other means of accessing The Nasdaq Market Center. Members are not obligated to subscribe to VTE terminals and may cancel an existing subscription at any time, with the obligation to pay only for full the monthly fee for the month canceled. As noted above, Nasdaq plans to ultimately phase out the service in 2017 in light of declining subscribership, the age of the technology, and because members have other options for connecting to, and entering orders in, The Nasdaq Market Center. As such, the Exchange believes that the proposed fees are reasonable.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed fees merely allow Nasdaq to recapture the increasing platform, overhead and technology infrastructure costs it incurs in support of the service, which are magnified on a per subscription basis given a declining subscriber base. The fees are applied uniformly among subscribing member firms, which are not compelled to subscribe to the service and may access the information provided through other means. For these reasons, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–078, and should be submitted on or before July 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14313 Filed 6–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Advanced Life Sciences Holdings, Inc., Anoteros, Inc., Emperial Americas, Inc., Nord Resources Corporation, and UNR Holdings, Inc.; Order of Suspension of Trading

June 15, 2016.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Advanced Life Sciences Holdings, Inc. ("ADLS[1]") (CIK No. 1322734), a void Delaware corporation located in Woodridge, Illinois with a class of securities registered with the Commission pursuant to Securities Exchange Act of 1934 ("Exchange Act") Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–K for the period ended December 31, 2010. On March 3, 2014, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to ADLS requesting compliance with its periodic filing requirements but ADLS did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual) ("Commission Issuer Address Rules"). As of June 8, 2016, the common stock of ADLS was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Anoteros, Inc. ("ANOS") (CIK No. 1390292), a revoked Nevada corporation located in Rolling Hills, California with a class of securities registered with the Commission pursuant to Exchange Act

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

[1] The short form of each issuer's name is also its stock symbol.

Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2014. On December 2, 2015, Corporation Finance sent a delinquency letter to ANOS requesting compliance with its periodic filing requirements but ANOS did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of June 8, 2016, the common stock of ANOS was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Emperial Americas, Inc. ("TEXX") (CIK No. 1424718), a dissolved Florida corporation located in Sarasota, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended June 30, 2012. On January 28, 2016, Corporation Finance sent a delinquency letter to TEXX requesting compliance with its periodic filing requirements but TEXX did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of June 8, 2016, the common stock of TEXX was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Nord Resources Corporation ("NRDSQ") (CIK No. 72316), a void Delaware corporation located in Tucson, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2013. On September 30, 2015, Corporation Finance sent a delinquency letter to NRDSQ requesting compliance with its periodic filing requirements which was delivered. As of June 8, 2016, the common stock of NRDSQ was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of UNR Holdings, Inc. ("UNRH") (CIK No. 1093800), a delinquent Colorado corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2012. On March 25, 2015, Corporation Finance sent a delinquency letter to UNRH requesting compliance with its periodic filing requirements which was delivered. As of June 8, 2016, the common stock of UNRH was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 15, 2016, through 11:59 p.m. EDT on June 28, 2016.

By the Commission.

Jill M. Peterson,

Secretary.

[FR Doc. 2016–14475 Filed 6–15–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78041]

Order Granting Limited and Conditional Exemption Under Section 36(a) of the Securities Exchange Act of 1934 From Compliance With Interactive Data File Exhibit Requirement in Forms 6–K, 8–K, 10–Q, 10–K, 20–F and 40–F To Facilitate Inline Filing of Tagged Financial Data

June 13, 2016.

I. Introduction

Operating companies are required to provide their financial statements accompanying their periodic and current reports in machine-readable format using eXtensible Business Reporting Language (XBRL). Companies currently provide this XBRL data as an exhibit to their filings. Since these requirements were first adopted, technology has evolved and now would allow filers to embed XBRL data directly into a HyperText Markup Language (HTML) document through a format known as Inline XBRL. The technology is freely licensed and made available by XBRL International,[1] and it is currently used by companies in other jurisdictions for a variety of regulatory purposes.[2]

We believe that filing financial statements with Inline XBRL has the potential to provide a number of benefits to filers and users of the information. For example, Inline XBRL could decrease filing preparation costs, improve the quality of structured data, and by improving data quality, increase the use of XBRL data by investors and other market participants. Consequently, as a means of further assessing the usefulness of Inline XBRL, we are exercising our authority under Section 36(a) of the Securities Exchange Act of 1934 (Exchange Act) to permit, but not require, operating companies to use Inline XBRL in their periodic and current reports under the Exchange Act through March 2020. Additionally, permitting companies to use Inline XBRL on a voluntary, time-limited basis could facilitate the development of Inline XBRL preparation and analysis tools, provide investors and companies with the opportunity to evaluate its usefulness, and help inform any future Commission rulemaking in this area.

II. Discussion

Information is "structured" when it is made machine-readable by labeling (or "tagging") the information using a markup language, such as XBRL, that can be processed by software for analysis. Structured information can be stored, shared, and presented in different systems or platforms. Companies currently use information systems that accommodate and rely upon structured information.

Standardized markup languages, such as XBRL, use sets of tags, referred to as taxonomies. Taxonomies provide common definitions that represent agreed-upon information about reporting standards, such as U.S. GAAP for accounting-based disclosures. The resulting standardization of financial reporting allows for aggregation, comparison, and large-scale statistical analysis of reported financial information through significantly more automated means than is possible with other formats, such as HTML.

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[1] *See http://specifications.xbrl.org/spec-group-index-inline-xbrl.html.*

[2] For example, in the United Kingdom, the "accounts and computations" part of a "Company Tax Return" must be submitted to HM Revenue and Customs using Inline XBRL. *See http://www.hmrc.gov.uk/ct/ct-online/taxonomy.htm.* Other examples include Australia (*http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-104mr-asic-introduces-format-for-improved-communication-of-financial-information/*); Japan (*https://www.xbrl.org/the-standard/why/who-else-uses-xbrl/*); Denmark (*https://www.xbrl.org/the-standard/why/who-else-uses-xbrl/*); and Ireland (*http://www.revenue.ie/en/online/ros/ixbrl/index.html*). We note that the specific disclosure regimes in these countries differ from that in the U.S.

Structured financial statement information is currently required to be submitted in an "Interactive Data File" exhibit to certain forms.[3] These forms are prepared in either HTML or (less commonly) American Standard Code for Information Interchange (ASCII) electronic formats. The form as prepared in these formats is called the "Related Official Filing." The Interactive Data File currently consists of an "instance document" and other documents as described in the EDGAR Filer Manual. For the purposes of this order, we use "instance document" to describe that part of the Interactive Data File that contains the XBRL tags for the information contained in the corresponding data in the Related Official Filing to satisfy the content and format requirements in 17 CFR 232.405. The other documents in the Interactive Data File contain contextual information about the XBRL tags.

Companies often create XBRL exhibits by first preparing their financial statements in a word processing application and then converting it to another format, such as HTML. Filers then create an XBRL exhibit by copying the financial statement information and tagging it in XBRL. In this way, preparers essentially tag a copy of the data contained in their HTML filings in a separate document, which requires them to expend resources to create and tag a copy of the data and verify the consistency of tagged data across documents.

Errors sometimes appear in financial statement information submitted in XBRL that affect the quality of the data and its potential use by the public and the Commission. For example, Commission staff has identified several recurring issues with XBRL submissions, including errors related to the characterization of a number as negative when it is positive, incorrect scaling of a number (*e.g.,* in billions rather than in millions), unnecessary custom tags (such as to achieve a particular presentation), incomplete tagging (*e.g.,* a failure to tag numbers in parentheses), and missing calculations that show relationships between data (*e.g.,* how adding cost of revenue to gross profit equals revenue and subtracting cost of revenue from revenue equals gross profit).[4] While these data quality issues may have multiple potential causes, we believe that some of these errors may result from the submission of XBRL tagged information as an exhibit separate from the Related Official Filing.

Embedding XBRL data in an HTML document (which we refer to together as the "Inline XBRL document") rather than tagging data in a separate instance document may increase the efficiency and effectiveness of the filing preparation and review process and, by saving time and effort spent on the these processes, may, over time, reduce the cost of compliance with XBRL requirements.[5] In particular, Inline XBRL makes it possible for preparers to view XBRL meta data[6] within the HTML document. By facilitating the review of XBRL data, we believe that Inline XBRL could decrease the overall time required to comply with the XBRL data filing requirement and may better equip preparers to detect and correct XBRL data errors.

Permitting filing in Inline XBRL is intended to improve XBRL data quality. In particular, the elimination of a separate instance document should reduce the incidence of re-keying errors. Additionally, Inline XBRL might eliminate unnecessary or inappropriate custom tags intended to make XBRL data look similar to an HTML document when "rendered" by software into a human-readable presentation. With Inline XBRL, companies would have less of an incentive to create custom tags solely to mimic the appearance of an HTML filing. To the extent that permitting filing using Inline XBRL might improve data quality, it may contribute to wider use of XBRL data by market participants and may enhance the benefits that are associated with XBRL more generally.

In light of the potential benefits from using Inline XBRL, we are initiating a voluntary, time-limited program to assess the usefulness of this new filing format. This voluntary program also may facilitate the development of technological tools to support the potential further use of Inline XBRL in the future.

We note that, with the acceptance of Inline XBRL filings under this program, XBRL data users, such as investors, analysts, filers, and data aggregators, may need to modify their software or algorithms to be able to extract the XBRL data. We believe, however, that such adjustments will be minimal because the voluntary Inline XBRL program will not affect the taxonomy or the scope of the information required to be tagged. In addition, the Commission has incorporated tools into the EDGAR system that will enable users to view information about the reported XBRL data contained in embedded tags on the Commission's Web site, using any recent standard Internet browser, without the need to access a separate document. With this feature, when a user views a filing submitted with Inline XBRL on EDGAR, the user will be able to see tags and the related meta data while viewing the HTML filing. Software enabling this feature will also be made freely available to the public in an effort to facilitate the creation of cost effective Inline XBRL viewers and analytical products. We also plan to make freely available software for Inline XBRL extraction, which may further mitigate potential effects on XBRL data users. Additionally, the EDGAR system will, for the duration of the voluntary program, extract and make available the XBRL tags from an Inline XBRL document as a separate file, enabling current software to continue automated processing of XBRL data with minimal changes to existing processes.

We also note that permitting filing using Inline XBRL may result in changes that affect those filers choosing to use Inline XBRL. Currently, when there is a major technical error with XBRL data submitted in an exhibit, the EDGAR validation system causes the exhibit to be removed from the submission, but the submission as a whole is not suspended. With Inline XBRL, the EDGAR validation system will suspend an Inline XBRL filing that contains a major technical error in embedded XBRL data, which would require the filing to be revised before it could be accepted by EDGAR. Based on staff observations, very few XBRL exhibits are suspended, in part, because companies and preparers routinely use tools the Commission makes available to submit test filings to help identify and correct technical errors prior to EDGAR filing. Similar tools to submit test filings will be available to those filers choosing to file in Inline XBRL. Because we expect that Inline XBRL filers would utilize available tools to submit test filings to identify and correct any technical errors prior to EDGAR filing, we believe that such suspensions should be similarly rare for Inline XBRL filers.

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[3] *See* 17 CFR 232.405; *see also* 17 CFR 229.601(b)(101).

[4] *See, e.g.,* Staff Observations of Custom Tag Rates (July 7, 2014), *available at http://www.sec.gov/dera/reportspubs/assessment-custom-tag-rates-xbrl.html;* Staff Observations from the Review of Interactive Data Financial Statements (December 13, 2011), *available at http://www.sec.gov/spotlight/xbrl/staff-review-observations-121311.shtml.*

[5] Embedding XBRL data in the HTML filing could create some confusion about the operation of current accuracy requirements, such as in Rule 405(c)(1). That rule requires "[e]ach data element . . . contained in the Interactive Data File [to reflect] the same information in the corresponding data in the Related Official Filing." Although the Inline XBRL document will contain XBRL data that is currently presented in the Interactive Data File, that data must still accurately reflect the corresponding information in the HTML format portion of the filing. See condition (c) below.

[6] Such meta data include, for example, definitions, reporting period information, data type, and related references.

III. Conclusion

Based on the foregoing, we find it is appropriate in the public interest and consistent with the protection of investors to grant companies that choose to use Inline XBRL when filing financial statements in their Exchange Act periodic and current reports a time-limited and conditional exemption from certain requirements of the Interactive Data File exhibit.

Accordingly, it is hereby ordered pursuant to Section 36(a) of the Exchange Act that any company that complies with each of the conditions below is exempt from the requirement to submit an instance document as described in this order as part of its Interactive Data File exhibit with Forms 6–K, 8–K, 10–Q, 10–K, 20–F and 40–F for reports due before March 30, 2020.

Conditions

The company must

(a) file an Inline XBRL document as prescribed in the EDGAR Filer Manual;

(b) file the Interactive Data File as prescribed in the EDGAR Filer Manual for Inline XBRL filers as an exhibit to the Inline XBRL document;

(c) use XBRL tags within the Inline XBRL document that reflect the same information in the corresponding data as the HTML format part of the official filing;

(d) state in the exhibit index item referencing the Interactive Data File that the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document;

(e) not file in plain text ASCII; and

(f) not rely on the hardship exemptions in Rules 201 and 202 of Regulation S–T.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–14306 Filed 6–16–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78055; File No. SR–ICC–2016–008]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Revise the ICC Clearing Rules

June 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2016, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of proposed rule change is to revise the ICC Clearing Rules (“ICC Rules”) to add explicit references to certain risk-related policies currently contained in the ICC Risk Management Framework and the ICC Risk Management Model Description document.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC proposes changes to ICC Rules 403 and 801 to add explicit references to certain risk-related policies currently contained in the ICC Risk Management Framework and the ICC Risk Management Model Description document related to the minimum time horizon for liquidation, anti-procyclicality conditions, and the maintenance of cover-2 default resources. The proposed changes are described in detail as follows.

As provided in the ICC Risk Management Model Description document, ICC’s initial margin methodology applies a minimum of a 5-day time horizon as the liquidation period for all ICC cleared instruments. ICC proposes amending ICC Rule 403 to explicitly reference this risk policy by stating that ICC’s initial margin methodology shall incorporate a minimum 5-day time horizon for the liquidation period (for both house and client-related positions).

Additionally, as provided in the ICC Risk Management Framework, ICC incorporates certain anti-procyclicality measures into its risk methodology to account for stable but prudent margin requirements.[3] ICC proposes amending ICC Rule 403 to explicitly reference its current anti-procyclicality measures and to provide for additional anti-procyclicality measures. Specifically, ICC proposes amending ICC Rule 403 to state that ICC’s initial margin methodology shall incorporate one or more measures designed to limit procyclicality, including by avoiding when possible disruptive or big step changes in margin requirements and by establishing transparent and predictable procedures for adjusting margin requirements in response to changing market conditions. Further, consistent with current ICC risk policies, the measures designed to limit procyclicality will demonstrably meet or exceed the requirements of measures designed to limit procyclicality that assign at least 25% weight to stressed observations in a look-back period beginning on April 1, 2007. In addition, changes to ICC Rule 403 also allow ICC to measure procyclicality limits by reference to a ten year historical look-back period for computing initial margin.[4]

Finally, as provided in the ICC Risk Management Framework, ICC maintains a minimum of cover-2 default resources, in accordance with Commodity Futures Trading Commission (“CFTC”) Regulations 39.11 and 39.33. ICC proposes amending ICC Rule 801(a)(i) to explicitly reference this risk policy and state that ICC shall establish the aggregate amount of required contributions to the Guaranty Fund such that at a minimum ICC will maintain pre-funded financial resources sufficient to enable it to meet its financial obligations to Clearing Participants ("CPs") notwithstanding a default by the two CPs (including any of their affiliated CPs) creating the largest combined loss to ICC in extreme but plausible market conditions.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 34–73877 (December 18, 2014) (SR–ICC–2014–18).

[4] Please note that as ICC uses a look-back period beginning on April 1, 2007, this ten year historical period anti-procyclicality measure will become available to ICC in 2017.

Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),[6] because ICC believes that the proposed changes will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions. The proposed changes to the ICC Rules to add explicit references to certain risk-related policies currently contained in the ICC Risk Management Framework and the ICC Risk Management Model Description document provide additional clarity and transparency regarding ICC's risk management policies and procedures. As such, the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F)[7] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed revision would have any impact, or impose any burden, on competition. ICC is restating certain risk-related policies in the ICC Rules and not making any substantive changes to its overall risk management framework. Therefore, ICC does not believe the proposed revision imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2016–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2016–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ICC and on ICC's Web site at *https://www.theice.com/clear-credit/regulation*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2016–008 and should be submitted on or before July 8, 2016.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b)(2)(C) of the Act[8] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[9] requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest.

The Commission finds that the proposed revision to the ICC Risk Management Framework and the ICC Risk Management Model Description are consistent with the requirements of the Act, in particular the requirements of Section 17A(b)(3)(F) of the Act,[10] because the proposed changes provide additional clarity and transparency regarding ICC's risk management policies and procedures. The Commission finds that the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and to comply with the provisions of the Act and the rules and regulations thereunder.

ICC has requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown pursuant to Section 19(b)(2). ICC is restating certain risk-related policies in the ICC Rules and not making any substantive changes to its overall risk management framework. In addition, ICC states that the changes are proposed in furtherance of regulatory compliance with European

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[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] Id.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(2)(C).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] Id. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission's implementing decision[11] on the equivalence of the regulatory framework of the United States of America for central counterparties ("CCPs") that are authorized and supervised by the CFTC to the requirements of European Market Infrastructure Regulation ("EMIR") No. 648/2012.[12] ICC represents that it has submitted an application to the European Securities and Markets Authority to be recognized as a third country CCP in accordance with EMIR; the proposed changes will facilitate this application process and promote regulatory compliance with the required equivalency elements. For the above reasons, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,[13] for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–ICC–2016–008) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14314 Filed 6–16–16; 8:45 am]

BILLING CODE 8011–01–P

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[11] See European Commission Implementing Decision (EU) 2016/377, dated 15 March 2016.

[12] See Regulation (EU) No 648/2012, dated 4 July 2012.

[13] 15 U.S.C. 78s(b)(2)(C)(iii).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Meeting

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the 4th quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings for the 4th quarter will be held on the following dates: Tuesday, July 19,2016 at 1:00 p.m. EST, Tuesday, August 16, 2016 at 1:00 p.m. EST Tuesday, September 20, 2016 at 1:00 p.m. EST.

ADDRESSES: These meetings will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section IO(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

SBA Update Annual
Meetings Board
Assignments
Member Roundtable

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Monika Nixon by fax or email. Her contact information is Monika Nixon, Program Specialist, 409 Third Street SW., Washington, DC 20416, Phone, 202–205–7310, Fax 202–481–5624, email, *monika.nixon@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Monika Nixon at the information above.

Miguel L' Heureux,

White House Liaison.

[FR Doc. 2016–14263 Filed 6–16–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and the United States Fish and Wildlife Service (USFWS).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and USFWS, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, on State Route 60 (SR–60) between Gilman Springs Road at Post Mile (PM) 22.10 and PM 26.61, located approximately 1.369 miles west of Jack Rabbit Trail, in a portion of unincorporated Riverside County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 14, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: James Shankel, Senior Environmental Planner, California Department of Transportation District 8, Division of Environmental Planning, 464 West 4th Street, 6th Floor, MS 827, San Bernardino, California, 92401–1400, during normal business hours from 8:00 a.m. to 5:00 p.m., telephone (909) 383–6379, or email *James.Shankel@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans and USFWS have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Construction of an eastbound truck-climbing lane and westbound truck-descending lane, and construction of 10-foot inside and 12-foot outside shoulders in both directions—on a portion of State Route 60 (SR–60) located in unincorporated Riverside County, between Gilman Springs Road at Post Mile (PM) 22.10 and PM 26.61, which is approximately 1.369 miles west of Jack Rabbit Trail. The total length of the project is 4.51 miles. The purpose of the SR–60 Truck Lanes Project is to improve operational performance, improve safety, and improve traffic flow on the regional transportation system. The nearest incorporated cities are Moreno Valley, located adjacent to the west side of Gilman Spring Road and Beaumont, located approximately one mile east of the eastern limits of this project.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) for the project, approved on May 16, 2016, and in other documents in the project records. The EA/FONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA and

FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist8/Project-SR-60-Truck-Climbing.html.* This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*);
3. Federal Aid Highway Act of 1970;
4. Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141);
5. Clean Air Act Amendments of 1990;
6. Noise Control Act of 1979;
7. 23 CFR part 772 FHWA Noise Standards, Policies and Procedures;
8. Department of Transportation Act of 1966, Section 4(f);
9. Clean Water Act of 1977 and 1987;
10. Endangered Species Act of 1973;
11. Migratory Bird Treaty Act;
12. National Historic Preservation Act of 1966, as amended;
13. Historic Sites Act of 1935;
14. Executive Order 11990—Protection of Wetlands;
15. Executive Order 12898—Environmental Justice;
16. Executive Order 13112—Invasive Species;
17. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Shawn E. Oliver,

Team Leader, Program Development, Federal Highway Administration, Sacramento, CA.

[FR Doc. 2016–14390 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic 10″ and 19″ Type MBT Lined Brake shoe, 10″ and 19″ Brake bearing assembly kit, 19″ Type MBT for restoration of electrical and mechanical systems of the Metropolitan Avenue Bridge over English Kills in New York City, NY.

DATES: The effective date of the waiver is June 20, 2016.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. William Winne, FHWA Office of the Chief Counsel, (202) 366–1397, or via email at *William.Winne@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for use of non-domestic 10″ and 19″ Type MBT Lined Brake shoe, 10″ and 19″ Brake bearing assembly kit, 19″ Type MBT for restoration of electrical and mechanical systems of the Metropolitan Avenue Bridge over English Kills in New York City, NY.

In accordance with Division K, section 122 of the "Consolidated and Further Continuing Appropriations Act, 2015" (Pub. L. 113–235), FHWA published a notice of intent to issue a waiver on its Web site; (*https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=123*) on April 20th. The FHWA received no comments in response to the publication. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of 10″ and 19″ Type MBT Lined Brake shoe, 10″ and 19″ Brake bearing assembly kit, 19″ Type MBT for restoration of electrical and mechanical systems of the Metropolitan Avenue Bridge over English Kills in New York City, NY.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410

Issued on: June 10, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–14392 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and the United States Fish and Wildlife Service (USFWS).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and USFWS, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project on Interstate 15 from Cajalco Road, Post Mile (PM) 36.8 to State Route 60 (SR–60) PM 51.4 through the cities of Corona, Norco, Eastvale, and Jurupa Valley, and portions of incorporated Riverside County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 14, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: James Shankel, Senior Environmental Planner, California Department of Transportation District 8, Division of Environmental Planning, 464 West 4th Street, 6th Floor, MS 827, San Bernardino, California, 92401–1400, during normal business hours from 8:00 a.m. to 5:00 p.m., telephone (909) 383–6379, or email *James.Shankel@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans and USFWS have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Construction of one or two tolled express lanes in each direction on I–15 in Riverside County between PM 36.8 and PM 51.4. Sign improvements would also be made to inform and guide users of the new tolled express lanes. Advanced signage is required to be posted at a minimum of two miles prior to the start of the tolled express lanes. The project limits for the signage extend from PM 34.7 in Riverside County to PM 1.3 in San Bernardino County. The Build Alternative would specifically provide one tolled express lane in each direction from Cajalco Road to Hidden Valley Parkway, provide two tolled express lanes in each direction from Hidden Valley Parkway northbound and Second Street southbound (Norco) to Cantu Galleano Ranch Road (Eastvale/Jurupa Valley), and construct one tolled express lane in each direction from Cantu Galleano Ranch Road (Eastvale/Jurupa Valley) to SR–60, with isolated outside widening at Riverside Avenue to maintain lane balance for the SR–60 West Bound loop connector.

The total length of the express lanes is approximately 14.6 miles. The purpose of the I–15 Express Lanes Project is to improve existing and future traffic operations and mainline travel times, expand travel choice, increase travel time reliability, and expand tolled express lane network. The lane improvements are located within Riverside County, California, and from south to north run through the cities of Corona, Norco, Eastvale, and Jurupa Valley and portions of unincorporated Riverside County.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) for the project, approved on May 4, 2016, and in other documents in the project records. The EA/FONSI, and other project records are available by contacting Caltrans at the address provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*);
3. Federal Aid Highway Act of 1970;
4. Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141);
5. Clean Air Act Amendments of 1990;
6. Noise Control Act of 1979;
7. 23 CFR part 772 FHWA Noise Standards, Policies and Procedures;
8. Department of Transportation Act of 1966, Section 4(f);
9. Clean Water Act of 1977 and 1987;
10. Endangered Species Act of 1973;
11. Migratory Bird Treaty Act;
12. National Historic Preservation Act of 1966, as amended;
13. Historic Sites Act of 1935;
14. Executive Order 11990—Protection of Wetlands;
15. Executive Order 12898—Environmental Justice;
16. Executive Order 13112—Invasive Species;
17. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Shawn E. Oliver,

Team Leader, Program Development, Federal Highway Administration, Sacramento, CA.

[FR Doc. 2016–14391 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic Voith 21/R5 propulsion units compatible with domestic Caterpillar engine 3512C/1600 rpm in the State of Virginia.

DATES: The effective date of the waiver is June 20, 2016.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. William Winne, FHWA Office of the Chief Counsel, (202) 366–1397, or via email at *William.Winne@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for use of non-domestic Voith 21/R5 propulsion units compatible with domestic Caterpillar engine 3512C/1600 rpm for a new Jamestown Ferry vessel in the State of Virginia.

In accordance with Division K, section 122 of the "Consolidated and Further Continuing Appropriations Act, 2015" (Pub. L. 113–235), FHWA published a notice of intent to issue a waiver on its Web site (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=124*) on April 21. The FHWA received no comments in response to the publication. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers Voith 21/R5 propulsion units compatible with domestic Caterpillar engine 3512C/1600 rpm for a new ferry boat in the State of Virginia.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: June 10, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–14393 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0057]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated May 23, 2016, Norfolk Southern Railway (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0057.

Applicant: Norfolk Southern Railway; Mr. B.L. Sykes, Chief Engineer, C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the modification of power-operated Switch 17 at Control Point (CP) MO, Milepost (MP) PT 250.5 on the NS Pittsburgh Line at Cresson, PA.

Switch 17 will be converted to a hand-operated switch with an electric lock. Signal 12W will be moved west, placing the converted switch outside of the limits of CP MO. The method of operation on main tracks 1 and 3 will be NS Operating Rule 261.

These changes are being proposed to improve operations in the area.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 1, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14324 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–12268]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 13, 2016, the Plymouth & Lincoln Railroad (PLL) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 219. FRA assigned the petition Docket Number FRA–2002–12268.

PLL requests an extension of an existing waiver providing relief from 49 CFR part 219, subparts D (Testing for Cause), E (Identification of Troubled Employees), F (Pre-Employment Tests), and G (Random Alcohol and Drug Testing Programs).

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 1, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy. See* also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14322 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–24647]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 1, 2016, the Hoosier Valley Railroad Museum (HVRM) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 219. FRA assigned the petition Docket Number FRA–2006–24647.

HVRM requests an extension of an existing waiver providing relief from certain parts of 49 CFR part 219, specifically, reasonable cause testing, random testing, and the requirement to have voluntary referral and co-worker report policies. HVRM also wishes to update the territory that this waiver extension should apply to. The updated stations and mileposts are as follows:

- North Judson at Milepost (MP) 212.7 (end of track) to Malden at MP 230.8 (end of track);
- LaCrosse at MP 0.5 to Wellsboro (Union Mills) at MP 15.3;
- Inclusive of Wye connection at MP 222.8 and MP 0.5 LaCrosse.

HVRM operations of tourist trains will again be primarily between North Judson at MP 212.7 to LaCrosse at MP 222.9 to Wade at MP 223.4, and from LaCrosse at MP 0.5 to South Thomaston at MP 6.1. The railroad states that passenger trains will not operate on any excepted track. Occasional excursions beyond LaCrosse westward to Malden and LaCrosse north to Wellsboro (Union Mills) would be five times or less annually, with communication and coordination with the shortline operator. The community of Hanna at MP 9.1 holds an annual town festival and requests HVRM excursion train operations during the festival weekend which is usually held in August. The community of Union Mills holds an annual festival, the community of Malden holds an event, and that segment of track offers some picnic trains and agricultural excursions to accompany the community events.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 1, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14323 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0058]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated May 24, 2016, Watco Companies LLC, petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0058.

Applicant: WATCO Transportations Services LLC, Anthony Cox, VP of Engineering, 315 East 3rd Street, Pittsburg, KS 66762.

Watco is the owner-operator of the Grand Elk Railroad (GDLK) on track that is currently leased from Norfolk Southern Railway (NS), and seeks approval of the discontinuance of the traffic control system (TCS) from Milepost (MP) 33.00 at Park, in Grand Rapids, MI, to MP 1.4 at the end of GDLK in Elkhart, IN.

The reason given for the proposed discontinuance is that traffic volumes do not warrant a TCS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulatons.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 1, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–14325 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Merchant Marine Academy Board of Visitors Meeting; Cancellation of Upcoming Meeting

AGENCY: Maritime Administration

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation, Maritime Administration (MARAD) is issuing this notice to cancel the June 14, 2016 U.S. Merchant Marine Academy ("Academy") Board of Visitors (BOV) meeting scheduled to be held at 2:00 p.m. at the Capital Visitors Center, in Washington, DC. The original **Federal Register** notice announcing the meeting was published Wednesday, June 1, 2016, 81 FR 35118.

FOR FURTHER INFORMATION CONTACT: The BOV's Designated Federal Officer or Point of Contact Brian Blower; 202 366–2765; *Brian.Blower@dot.gov.*

(Authority: 46 U.S.C. 51312; 5 U.S.C. app. 552b; 41 CFR parts 102–3.140 through 102–3.165)

By Order of the Maritime Administrator.

Dated: June 14, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–14370 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0028]

Application To Reinstate Information Collection Request OMB No. 2105–0566

AGENCY: Office of the Secretary (OST), Department of Transportation (Department).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the request for reinstatement of an OMB Control Number for the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 2, 2015 (80 FR 31455).

DATES: Comments on this notice must be received by July 18, 2016.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Graber or Daeleen Chesley, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–9342 (Voice), or at *kimberly.graber@dot.gov* or *Daeleen.Chesley@dot.gov* (Email). Arrangements to receive this document in an alternative format may be made by contacting the above-named individuals.

SUPPLEMENTARY INFORMATION:

Title: Submission of U.S. Carrier and Airport Tarmac Delay Emergency Contingency Plans Pursuant to FAA Modernization and Reform Act.

OMB Control Number: 2105–0566.

Type of Request: Request to reinstate OMB control number 2105–0566.

Abstract: The FAA Modernization and Reform Act, which was signed into law on February 14, 2012, required U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats, and operators of large hub, medium hub, small hub, or non-hub U.S. airports, to submit emergency contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval no later than May 14, 2012. The Act also required each covered carrier and airport to ensure public access to its plan after DOT approval by posting the plan on its Web site.

On May 2, 2012, OMB approved information collection of the reports on an emergency basis due to the short timeframe imposed by the Act. The Department created an online system allowing covered U.S. air carriers and U.S. airports to submit plans online and issued a notice in the **Federal Register** stating how these entities should submit the required plans to the Department through the online system (77 FR 27267, May 9, 2012). Pursuant to the requirements of the Act, the Department reviewed and approved emergency contingency plans submitted by over 450 covered air carriers and airports.

In addition to requiring the initial submission of emergency contingency plans, the Act requires U.S. air carriers to submit an updated plan every 3 years and U.S. airport operators to submit an updated plan every 5 years and to ensure public access to those plans after DOT approval. The emergency approval terminated on November 30, 2012.

The Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 2, 2015, OST published a 60-day notice in the **Federal Register** soliciting comment on ICRs for which the agency was seeking OMB approval. *See* 80 FR 105 at 31455. OST received no comments after issuing this notice. Accordingly, the Department announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). The 30-day notice informs the regulated community to file relevant comments to OMB and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure their full consideration. 5 CFR 1320.12(c); *see also* 60 FR 44983 (Aug. 29, 1995).

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

1. Requirement to submit tarmac delay plan to DOT for review and approval.

Respondents: Each large, medium, small and non-hub airport in the U.S.; U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats.

Estimated Number of Respondents: 420 U.S. airports and 65 U.S. airlines.

Frequency: Every 5 years for covered U.S. airports; every 3 years for covered U.S. airlines.

Estimated Total Burden on Respondents: For U.S. airports—247.5 hours (25 "new" airports × 2 hours = 50 hours) + (395 existing airports × .5 hours = 197.5 hours). For U.S. airlines—40 hours (60 existing airlines × .5 hours = 30 hours) + (5 new airlines × 2 hours = 10 hours).

2. Requirement to post tarmac delay plan on Web sites.

Respondents: Each large, medium, small and non-hub airport in the U.S.; U.S. carriers that operate scheduled passenger service or public charter service operating to or from the United States, using any aircraft with a design capacity of 30 or more seats.

Estimated Number of Respondents: 420 U.S. airports and 65 U.S. airlines.

Estimated Total Frequency: Every 5 years for covered U.S. airports; every 3 years for covered U.S. airlines (if not already posted or if there are updates).

Burden on Respondents: 121.25 hours (420 airports × .25 hours = 105 hours) + (65 airlines × .25 hours = 16.25 hours).

Public Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents without reducing the quality of the collection of information, including the use of automated collection techniques or other forms of information technology. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on June 10, 2016.

Claire W. Barrett,

DOT Chief Privacy & Information Governance Officer, Office of the Secretary.

[FR Doc. 2016–14361 Filed 6–16–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 14, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 18, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0155.

Type of Review: Revision of a currently approved collection.

Title: Investment Credit.

Form: Form 3468.

Abstract: Form 3468, Investment Credit, is used to claim the investment credit. The investment credit consists of the rehabilitation, energy, qualifying advanced coal project, qualifying gasification project, and qualifying advanced energy project credits. If you file electronically, you must send in a paper Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return, if attachments are required to Form 3468.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 523,418.

OMB Control Number: 1545–1231.

Type of Review: Reinstatement of a previously approved collection.

Title: Tax Return Preparer Penalties Under Sections 6694 and 6695.

Abstract: TD 9436 contains final regulations implementing amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code (Code) and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The regulations affect tax return preparers and provide guidance regarding the amended provisions.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 10,679,320.

OMB Control Number: 1545–1590.

Type of Review: Reinstatement of a previously approved collection.

Title: REG–251698–96 (TD 8869—Final) Subchapter S Subsidiaries.

Abstract: These regulations relate to the treatment of corporate subsidiaries of S corporations and interpret the rules added to the Code by section 1308 of the Small Business Job Protection Act of 1996. Responses to this collections of information are required to determine the manner in which a corporate subsidiary of an S corporation will be treated.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 10,110.

OMB Control Number: 1545–1694.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Ruling 2000–35: Automatic Enrollment in Section 403(b) Plans.

Abstract: This ruling specifies the criteria to be met in order to automatically reduce an employee's compensation by a certain amount and have that amount contributed as an elective deferral to an employer's section 403(b) plan.

Affected Public: State, local or tribal governments; Not-for-profit institutions.

Estimated Total Annual Burden Hours: 175.

OMB Control Number: 1545–1806.

Type of Review: Reinstatement of a previously approved collection.

Title: Form 8883, Asset Allocation Statement Under Section 338.

Form: 8883.

Abstract: Form 8883 is used to report information about transactions involving the deemed sale of corporate assets under Code section 338.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 5,755.

OMB Control Number: 1545–1851.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 9083—Golden Parachute Payments.

Abstract: T.D. 9083 contains final regulations relating to golden parachute payments under section 280G of the Code. The collection of information in this regulation is in § 1.280G–1, Q/A–7(a). This information is a brief description of all material facts concerning all payments which would be parachute payments (but for § 1.280G–1, Q/A–6). This information may be used by certain corporations with no readily tradeable stock (assuming certain shareholder approval requirements are also met) to determine if the payments to a disqualified individual are exempt from the definition of parachute payments.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 12,000.

OMB Control Number: 1545–2264.

Type of Review: Revision of a currently approved collection.

Title: TD 9757; REG–127923–15 Guidance under Sec. 6035 Consistent Basis Reporting between Estate & Person Acquiring Property; Form 8971—Information Regarding Beneficiaries Acquiring Property from a Decedent.

Form: Form 8971 and Schedule A.

Abstract: The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires executors of an estate and other persons who are required to file Form 706, Form 706–NA, or Form 706–A to report the final estate tax value of property distributed or to be distributed from the estate, if the estate tax return is filed after July 2015. Form 8971, along with a copy of every Schedule A, is used to report values to the IRS. TD 9757 contains temporary regulations that provide transition rules providing that executors and other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 53,100.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–14398 Filed 6–16–16; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES SENTENCING COMMISSION

Request for Applications; Federal Public Defenders Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: The Commission has decided to establish a Federal Public Defenders Advisory Group as a standing advisory group pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Having adopted a formal charter for the Federal Public Defenders Advisory Group, the Commission is constituting the initial voting membership of the advisory group under that charter. Under the charter, the advisory group will consist of not more than 17 voting members. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members. As indicated in the **SUPPLEMENTARY INFORMATION** section below, to be eligible to serve as a voting member, an individual must be an attorney (1) from a federal public defender organization or community defender organization; (2) with significant experience with federal sentencing or post convictions issues related to criminal sentences; and (3) in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. All voting members are selected and appointed by the Commission. Circuit members must be from a federal public defender organization or federal community defender organization located within the circuit they are appointed to represent. The Commission hereby invites any individual who is eligible to be appointed to the initial voting membership of the Federal Public Defenders Advisory Group to apply. Application materials should be received by the Commission not later than August 8, 2016. An applicant for voting membership of the Federal Public Defenders Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the **ADDRESSES** section below.

DATES: Application materials for the initial voting membership of the Federal Public Defenders Advisory Group should be received not later than August 8, 2016.

ADDRESSES: An applicant for voting membership of the Federal Public Defenders Advisory Group should apply by sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov.* The regular mail address is United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov.* More information about the Federal Public Defenders Advisory Group (including the advisory group charter) is available on the Commission's Web site at *http://www.ussc.gov/about/who-we-are/advisory-groups.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p). Under 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure, the Commission may create standing or ad hoc advisory groups to facilitate formal and informal input to the Commission. Upon creating an advisory group, the Commission may prescribe the policies regarding the purpose, membership, and operation of the group as the Commission deems necessary or appropriate.

The Commission recently adopted a formal charter for the Federal Public Defenders Advisory Group. Under the charter, the purpose of the advisory group is:

(1) To assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o);

(2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments;

(3) to disseminate to federal defenders, and to other professionals in public defender and community defender organizations, information regarding federal sentencing issues; and

(4) to perform other related functions as the Commission requests.

The Federal Public Defenders Advisory Group shall consist of no more than 17 voting members. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members. To be eligible to serve as a voting member, an individual must be an attorney (1) from a federal public defender organization or community defender organization; (2) with significant experience with federal sentencing or post convictions issues related to criminal sentences; and (3) in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. All voting members are appointed by the Commission. Circuit members shall be selected from the circuit in which their respective federal public defender organizations or community defender organizations are located.

All voting members of the Federal Public Defenders Advisory Group shall serve not more than two consecutive three-year terms. However, the terms of the initial voting membership shall be staggered so that—

(1) the initial Chair shall serve a term of three years;

(2) the initial Vice Chair shall serve a term of two years;

(3) of the initial circuit members, 4 shall serve a term of three years, 4 two years, and 4 one year; and

(4) of the initial at-large members, 1 shall serve a term of three years, 1 two years, and 1 one year.

The Commission invites any individual who is eligible to be appointed to the initial voting membership of the Federal Public Defenders Advisory Group to apply by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Patti B. Saris,

Chair.

[FR Doc. 2016–14384 Filed 6–16–16; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the Advisory Committee on Former Prisoners of War (FPOW) will meet on August 16–18, 2016 at 425 I Street NW., 4th Floor, Room 4E.400, Washington, DC. The meetings will be held from 9:00 a.m. to 4:00 p.m. on August 16–17 and 9:00 a.m. to 12:00 p.m. on August 18. All sessions are open to the public.

The purpose of the Committee is to advise the Secretary of VA on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

On Tuesday, August 16, the Committee will meet in open session and will hear from its Chairman and the Secretary of VA. In addition, the VA Office of General Counsel will provide annual ethics training. On Wednesday, August 17, the Committee will host an open public forum and will receive briefings by representatives of Veterans Benefits Administration and Veterans Health Administration. On Thursday, August 18, the Committee will assemble in open session from 9:00 a.m. to 10:00 a.m. From 10:00 a.m. to 10:30 a.m., the Committee will convene a closed session in order to protect patient privacy as the Committee tours the VA Central Office. The Committee will reconvene at 10:30 a.m. to draft the beginning of their 2016 recommendations and decide the location of their next meeting.

Former Prisoners of War who wish to speak at the public forum are invited to submit a 1–2 page summary of their comments at the end of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. Eric Robinson, Designated Federal Officer, Advisory Committee on Former Prisoners of War (and Program Analyst Compensation Service), Department of Veterans Affairs, 810 Vermont Avenue NW., (212), Washington, DC 20420, or via email at *eric.robinson3@va.gov.* Any member of the public seeking additional information should contact Mr. Robinson via email or call (202) 443–6016. Because the meeting will be held in a Government building, anyone attending must be prepared to show a valid photo ID. Please allow 15 minutes before the meeting begins for this process. Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Robinson.

Dated: June 14, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–14369 Filed 6–16–16; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Part 460
Energy Conservation Standards for Manufactured Housing; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 460

[Docket No. EERE–2009–BT–BC–0021]

RIN 1904–AC11

Energy Conservation Standards for Manufactured Housing

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The U.S. Department of Energy (DOE) is publishing a proposed rule to implement the Energy Independence and Security Act of 2007, which directs DOE to establish energy conservation standards for manufactured housing. DOE proposes to establish energy conservation standards for manufactured housing based on the negotiated consensus recommendations of the manufactured housing working group (MH working group). The MH working group's recommendations were based on the 2015 edition of the International Energy Conservation Code (IECC), the impact of the IECC on the purchase price of manufactured housing, total lifecycle construction and operating costs, factory design and construction techniques unique to manufactured housing, and the current construction and safety standards set forth by U.S. Department of Housing and Urban Development.

DATES: DOE will accept comments, data, and information regarding this proposed rule before and after the public meeting, but no later than August 16, 2016 DOE will hold a public meeting on Wednesday, July 13, 2016 from 9:00 a.m. to 4:00 p.m. in Washington, DC.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the public meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 to initiate the necessary procedures.

Any comments submitted must identify the notice title, docket number EERE–2009–BT–BC–0021, and/or the regulatory identifier number (RIN) 1904–AC11. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: ManufacturedHousing2009BC0021@ee.doe.gov.* Include docket number EE–2009–BT–BC–0021 and/or RIN 1904–AC11 in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Suite 600, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit electronically to ensure timely receipt.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document ("Public Participation").

Docket: The docket is available for review at *www.regulations.gov* and includes **Federal Register** notices, public comments, meeting transcript summaries, and other supporting documents and materials. All documents in the docket are listed in the *regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=97.* This Web page contains a link to the docket for this notice on the *regulations.gov* site. The *regulations.gov* Web page also contains instructions on how to access all documents, including public comments, in the docket. See section V of the **SUPPLEMENTARY INFORMATION** for more information on how to submit comments for this rulemaking through *regulations.gov.*

For further information on how to submit or review public comments, participate in the public meeting, or view hard copies of the docket, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121; (202) 586–2945; *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Hagerman, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program (EE–2J), 1000 Independence Avenue SW., Washington, DC, 20585; (202) 586–4549; *joseph.hagerman@ee.doe.gov.*

For information on legal issues presented in this document, contact: Ms. Kavita Vaidyanathan, U.S. Department of Energy, Forrestal Building, Office of the General Counsel (GC–33), 1000 Independence Avenue SW., Washington, DC, 20585; (202) 586–0669; *kavita.vaidyanathan@hq.doe.gov.*

DOE proposes to incorporate by reference into part 460 the following industry standards:

(1) Manual J—Residential Load Calculation (8th Edition).

(2) Manual S—Residential Equipment Selection (2nd Edition).

Copies of Manual J and Manual S may be purchased from Air Conditioning Contractors of America, Inc., (ACCA), 2800 S. Shirlington Road, Suite 300, Arlington, VA 22206, 703–575–4477, *http://www.acca.org/.*

(3) Overall U-Values and Heating/Cooling Loads—Manufactured Homes. Conner C.C., Taylor, Z.T., Pacific Northwest Laboratory, published February 1, 1992.

You may purchase a copy of Overall U-Values and Heating/Cooling Loads—Manufactured Homes from *http://www.huduser.org/portal/publications/manufhsg/uvalue.html* 800–245–2691.

For a further discussion of these standards, see section V.N of this document.

SUPPLEMENTARY INFORMATION:

I. Synopsis of the Proposed Rule
  A. The Proposed Regulations
  B. Benefits and Costs to Purchasers of Manufactured Housing
  C. Manufacturer Impact
  D. Nationwide Impacts
  E. Nationwide Environmental Benefits
  F. Total Benefits and Costs
II. Introduction
  A. Authority
  B. Background
  1. Current Regulation of Manufactured Housing
  2. The International Energy Conservation Code
  3. Development of the Proposed Rule
III. Discussion
  A. The Basis for the Proposed Standards
  B. Proposed Energy Conservation Requirements
  1. Subpart A: General
  2. Subpart B: Building thermal envelope
  3. Subpart C: HVAC, service water heating, and equipment sizing
  C. Other 2015 IECC Specifications
  1. Section R302
  2. Section R303.1
  3. Section R401.3
  4. Section R402.4
  5. Section R403

  6. Section R404
  7. Section R405
  8. Section R406
  9. Chapter 5
  10. Chapter 6
 D. Crosswalk of Proposed Standards With the HUD Code
 E. Compliance and Enforcement
IV. Economic Impacts and Energy Savings
 A. Economic Impacts on Individual Purchasers of Manufactured Homes
 B. Manufacturer Impacts
 C. Nationwide Impacts
 D. Nationwide Environmental Benefits
 E. Total Benefits and Costs
V. Regulatory Review
 A. Executive Order 12866
 B. Executive Order 13563
 C. Regulatory Flexibility Act
 D. Paperwork Reduction Act
 E. National Environmental Policy Act
 F. Executive Order 13132
 G. Executive Order 12988
 H. Unfunded Mandates Reform Act
 I. Family and General Government Appropriations Act
 J. Executive Order 12630
 K. Treasury and General Government Appropriations Act
 L. Executive Order 13211
 M. Section 32 of the Federal Energy Administration Act of 1974
 N. Materials Incorporated by Reference
VI. Public Participation
 A. Attendance at Public Meeting
 B. Procedure for Submitting Prepared General Statements for Distribution
 C. Conduct of Public Meeting
 D. Submission of Comments
  1. Submitting Comments via *Regulations.gov*
  2. Submitting Comments via Email, Hand Delivery, or Mail.
 E. Issues on Which DOE Seeks Comment
VII. Approval of the Office of the Secretary

I. Synopsis of the Proposed Rule

A. The Proposed Regulations

The Energy Independence and Security Act of 2007 (EISA, Pub. L. 110–140) directs the U.S. Department of Energy (DOE) to establish energy conservation standards for manufactured housing. EISA directs DOE to base the standards on the most recent version of the International Energy Conservation Code (IECC) and any supplements to that document, except where DOE finds that the IECC is not cost-effective or where a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total lifecycle construction and operating costs. *See* 42 U.S.C. 17071. In accordance with this statutory directive, DOE is proposing energy conservation standards for manufactured housing. These energy conservation standards would be codified in a new part of the Code of Federal Regulations (CFR) under 10 CFR part 460 subparts A, B, and C.

Subpart A discusses generally the scope of the proposed rule and provides proposed definitions of key terms. The subpart also would provide manufacturers with a one-year lead time for compliance such that the standards would apply to all manufactured homes manufactured on or after one year following the publication of a final rule.

Subpart B would establish requirements related to climate zones and the building thermal envelope of manufactured homes. DOE proposes to base its energy conservation requirements on four climate zones, which generally follow state borders, with some exceptions. Regarding the building thermal envelope, DOE proposes two approaches to compliance. The first is a prescriptive approach that would establish specific requirements for component and fenestration thermal resistance (*R*-value), thermal transmittance (*U*-factor), and solar heat gain coefficient (SHGC). The second is a performance-based approach that would establish a maximum overall thermal transmittance (U_o) requirement for the building thermal envelope and additional *U*-factor and SHGC requirements. Subpart B also would include provisions for determining *U*-factor, *R*-value, SHGC, and U_o. Finally, subpart B would establish prescriptive requirements for insulation and sealing the building thermal envelope to limit air leakage.

Subpart C would establish requirements related to duct leakage; heating, ventilation, and air conditioning (HVAC); service hot water systems; mechanical ventilation fan efficacy; and heating and cooling equipment sizing.

B. Benefits and Costs to Purchasers of Manufactured Housing

As explained in greater detail in section IV of this document and in chapter 9 of the technical support document (TSD) accompanying this proposed rule, DOE estimates that benefits to manufactured homeowners in terms of lifecycle cost (LCC) savings and energy cost savings under the proposed rule would outweigh the potential increase in purchase price for manufactured homes. As presented in Table I.1, DOE estimates that the average purchase price of a manufactured home under the proposed rule would increase as much as $2,423 for a single-section and $3,745 for a multi-section manufactured home as a result of the increased construction costs associated with energy conservation improvements.

TABLE I.1—NATIONAL AVERAGE MANUFACTURED HOUSING PURCHASE PRICE (AND PERCENTAGE) INCREASES UNDER THE PROPOSED RULE

	Single-section		Multi-section	
	($)	(%)	($)	(%)
Climate Zone 1	2,422	5.3	3,748	4.5
Climate Zone 2	2,348	5.1	3,668	4.4
Climate Zone 3	2,041	4.5	2,655	3.2
Climate Zone 4	2,208	4.8	2,877	3.4
National Average	2,226	4.9	3,109	3.7

As explained in more detail in section IV.A of this document and in chapter 9 of the TSD, Table I.2 presents the estimated national average LCC savings and energy savings that a manufactured homeowner would experience under the proposed rule as compared to a manufactured home constructed in accordance with the minimum requirements of the existing HUD Code at 24 CFR part 3282. Table I.2 and Figure I.1 present the nationwide average simple payback period (purchase price increase divided by first year energy cost savings) under the proposed rule.

TABLE I.2—NATIONAL AVERAGE PER-HOME COST SAVINGS UNDER THE PROPOSED RULE

	Single-section	Multi-section
Lifecycle Cost Savings (30-Year Lifetime)	$3,211	$4,625.
Annual Energy Cost Savings in 2015 dollars	$345	$490.
Simple Payback	7.1 years	6.9 years.

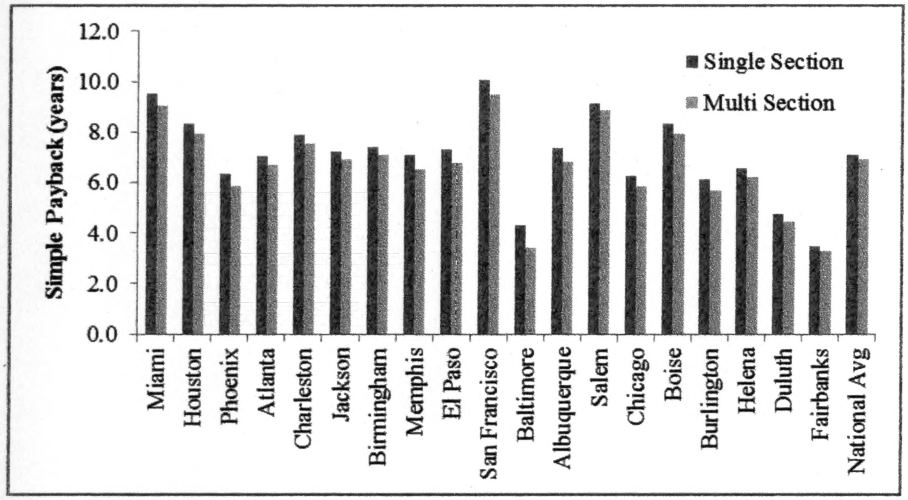

Figure I.1: Simple Payback Period of the Proposed Rule

C. Manufacturer Impact

As discussed in more detail in section IV.B of this document and chapter 12 of the TSD, the industry net present value (INPV) is the sum of the discounted cash flows to the industry from the announcement year (2016) through the end of the analysis period (2046). Using a real discount rate of 9.2 percent, DOE estimates the base case INPV for manufacturers to be $716.7 million. Under the proposed standards, DOE expects that the INPV will be reduced by 0.7 to 6.8 percent. Industry conversion costs are expected to total $1.6 million.

D. Nationwide Impacts

As described in more detail in section IV.C of this document and chapter 11 of the TSD, DOE's national impact analysis (NIA) projects a net benefit to the nation as a whole as a result of the proposed rule in terms of national energy savings (NES) and the net present value (NPV) of expected total manufactured homeowner costs and savings as compared with manufactured homes built to the minimum standards established in the HUD Code. As part of its NIA, DOE has projected the energy savings, operating cost savings, incremental equipment costs, and NPV of manufactured homeowner benefits for manufactured homes sold in a 30-year period from 2017 through 2046. The NIA builds off the LCC analysis discussed by the MH working group by aggregating results for all affected shipments over a 30-year period. All NES and percent energy savings calculations are relative to a no regulatory action alternative, which would maintain energy conservation requirements at the levels established in the existing HUD Code.

Table I.3 and Table I.4 illustrate the cumulative NES over the 30-year analysis period under the proposed rule on a full-fuel-cycle (FFC) energy savings basis. FFC energy savings apply a factor to account for losses associated with generation, transmission, and distribution of electricity, and the energy consumed in extracting, processing, and transporting or distributing primary fuels. NES differ among the different climate zones because of varying energy conservation requirements and varying shipment projections in each climate zone. All NES and percent energy savings calculations are relative to a no regulatory action alternative, which would maintain energy conservation requirements at the levels established in the existing HUD Code.

TABLE I.3—CUMULATIVE NATIONAL ENERGY SAVINGS INCLUDING FULL-FUEL-CYCLE OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME

	Single-section quadrillion British thermal units (BTUs) (quads)	Multi-section quadrillion BTUs (quads)
Climate Zone 1	0.179	0.294
Climate Zone 2	0.130	0.245
Climate Zone 3	0.272	0.474
Climate Zone 4	0.303	0.416

TABLE I.3—CUMULATIVE NATIONAL ENERGY SAVINGS INCLUDING FULL-FUEL-CYCLE OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME—Continued

	Single-section quadrillion British thermal units (BTUs) (quads)	Multi-section quadrillion BTUs (quads)
Total	0.884	1.428

TABLE I.4—PERCENTAGE OF CUMULATIVE NATIONAL ENERGY SAVINGS INCLUDING FULL-FUEL-CYCLE OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME

	Single-section (%)	Multi-section (%)
Climate Zone 1	25.3	29.9
Climate Zone 2	25.4	30.6
Climate Zone 3	26.0	28.1
Climate Zone 4	25.4	26.6
Total	25.6	28.3

Table I.5 and I.6 illustrate the NPV of customer benefits over the 30-year analysis period under the proposed rule for a discount rate of 7 percent and 3 percent, respectively. The NPV of customer benefits differ among the four climate zones because of differing initial costs and corresponding operating cost savings, as well as differing shipment projections in each climate zone. Under the proposed rule, all climate zones have a positive NPV for both discount rates.

TABLE I.5—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME AT A 7% DISCOUNT RATE

	Single-section (billion 2015$)	Multi-section (billion 2015$)
Climate Zone 1	0.19	0.34
Climate Zone 2	0.16	0.35
Climate Zone 3	0.39	0.74
Climate Zone 4	0.52	0.74
Total	1.26	2.18

TABLE I.6—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME AT A 3% DISCOUNT RATE

	Single-section (billion 2015$)	Multi-section (billion 2015$)
Climate Zone 1	0.66	1.16
Climate Zone 2	0.54	1.10
Climate Zone 3	1.22	2.26
Climate Zone 4	1.60	2.24
Total	4.03	6.75

E. Nationwide Environmental Benefits

As discussed in section IV.D of this document and in the NIA included in chapter 11 of the TSD accompanying this proposed rule, DOE's analyses indicate that the proposed rule would reduce overall demand for energy in manufactured homes. The proposed rule also would produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. DOE estimates that 18.1 million metric tons of carbon dioxide emissions would be avoided through the end of 2030 as a result of the proposed rule.

Emissions avoided under the proposed rule are related to the energy savings that would be achieved within manufactured homes. DOE estimates that, under the proposed rule, 2.3 quadrillion Btu (quads) of FFC energy would be saved relative to manufactured homes constructed under the minimum requirements of the HUD Code over a 30-year analysis period. DOE estimates reductions in emissions of six pollutants associated with energy savings: Carbon dioxide (CO_2), mercury (Hg), nitric oxide and nitrogen dioxide (NO_X), sulfur dioxide (SO_2), methane (CH_4), and nitrous oxide (N_2O). These emissions reductions are referred to as "site" emissions reductions. Furthermore, DOE estimates reductions in emissions associated with the production of these fuels (including extracting, processing, and transporting these fuels to power plants or manufactured homes). These emissions reductions are referred to as "upstream" emissions reductions. Together, site emissions reductions and upstream emissions reductions account for the FFC.

Table I.7 lists the emissions reductions under the proposed rule for both single-section and multi-section manufactured homes.

TABLE I.7—EMISSIONS REDUCTIONS ASSOCIATED WITH ELECTRICITY PRODUCTION FOR MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME

Pollutant	Single-section	Multi-section
Site Emissions Reductions		
CO_2 (million metric tons)	56.5	91.1
Hg (metric tons)	0.0904	0.146
NO_X (thousand metric tons)	223	356
SO_2 (thousand metric tons)	27.6	44.4
CH_4 (thousand metric tons)	3.78	6.09
N_2O (thousand metric tons)	0.632	1.02
Upstream Emissions Reductions		
CO_2 (million metric tons)	4.01	6.45
Hg (metric tons)	0.000944	0.00153
NO_X (thousand metric tons)	51.8	83.2
SO_2 (thousand metric tons)	0.615	0.991
CH_4 (thousand metric tons)	239	385
N_2O (thousand metric tons)	0.0294	0.0474
Total Emissions Reductions		
CO_2 (million metric tons)	60.5	97.6
Hg (metric tons)	0.0913	0.148
NO_X (thousand metric tons)	275	439
SO_2 (thousand metric tons)	28.2	45.4
CH_4 (thousand metric tons)	243	391
N_2O (thousand metric tons)	0.661	1.07

Additionally, DOE has considered the estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that would be expected to result from the proposed rule. DOE calculated the monetary values for each of these emissions reductions using the social cost of carbon (SCC) model, which estimates the monetized damages associated with an incremental increase in carbon emissions within a given year. The SCC is intended to account for, but is not limited to, changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services.

Table I.8 provides the NPV of monetized emissions benefits from CO_2 and NO_X under the proposed rule. DOE estimates that the monetized benefits from emissions reductions associated with the proposed rule would be $5,541.5 million ($4,731.4 million in CO_2 emissions reductions plus $810.1 million in NO_X emissions reductions) over a 30-year analysis period at the 3 percent discount rate and the CO_2 cost associated with the average SCC case.

TABLE I.8—NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER THE PROPOSED RULE

Monetary benefits	Discount rate (%)	Net present value (million 2015$)	
		Single-section	Multi-section
CO_2, Average SCC Case *	5	368.2	593.7
CO_2, Average SCC Case *	3	1,810.9	2,920.5
CO_2, Average SCC Case *	2.5	2,925.0	4,717.3
CO_2, 95th Percentile SCC Case *	3	5,581.5	9,001.5
NO_X Reduction at $2,755/metric ton *	3	311.5	498.6
	7	119.8	191.9

* The CO_2 values represent global monetized values (in 2015$) of the social cost of CO_2 emissions reductions for manufactured homes shipped from 2017–2046 with a 30-year lifetime under several different scenarios of the SCC model. The "average SCC case" refers to average predicted monetary savings as predicted by the SCC model. The "95th percentile case" refers to values calculated using the 95th percentile impacts of the SCC model, which accounts for greater than expected environmental damages. The value for NO_X (in 2015$) is the average of the low and high values used in DOE's analysis.

F. Total Benefits and Costs

As explained in greater detail in section IV of this document and chapter 15 of the TSD, Table I.9 presents the total benefits and costs to manufactured homeowners associated with the proposed rule, expressed in terms of annualized values.[1]

TABLE I.9—TOTAL ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOMEOWNERS UNDER THE PROPOSED RULE

	Discount rate (%)	Monetized (million 2015$/year)		
		Primary estimate **	Low estimate **	High estimate **
		Benefits *		
Operating (Energy) Cost Savings	7	516	400	688.
	3	843	617	1,191.
CO$_2$, Average SCC Case ***	5	63	46	85.
CO$_2$, Average SCC Case ***	3	241	176	331.
CO$_2$, Average SCC Case ***	2.5	365	266	503.
CO$_2$, 95th Percentile SCC Case ***	3	744	543	1,022.
NO$_X$ Reduction at $2,755/metric ton ***	7	25	20	32.
	3	41	31	56.
Total (Operating Cost Savings, CO$_2$ Reduction and NO$_X$ Reduction).	7 plus CO$_2$ range	604 to 1,285	466 to 962	805 to 1,742.
	7	783	596	1,052.
	3	1,126	824	1,578.
	3 plus CO$_2$ range	947 to 1,628	694 to 1,191	1,332 to 2,269.
		Costs *		
Incremental Purchase Price Increase	7	220	165	285.
	3	277	192	378.
		Net Benefits/Costs *		
Total (Operating Cost Savings, CO$_2$ Reduction and NO$_X$ Reduction, Minus Incremental Cost Increase to Homes).	7 plus CO$_2$ range	384 to 1,065	301 to 797	520 to 1,457.
	7	563	431	767.
	3	849	632	1,200.
	3 plus CO$_2$ range	670 to 1,351	502 to 999	954 to 1,891.

* The benefits and costs are calculated for homes shipped in 2017–2046.

** The Primary, Low, and High Estimates utilize forecasts of energy prices from the 2015 *AEO* Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

*** The CO$_2$ values represent global monetized values (in 2015$) of the social cost of CO$_2$ emissions reductions over the analysis period under several different scenarios of the SCC model. The "average SCC case" refers to average predicted monetary savings as predicted by the SCC model. The "95th percentile case" refers to values calculated using the 95th percentile impacts of the SCC model, which accounts for greater than expected environmental damages. The value for NO$_X$ (in 2015$) is the average of the low and high values used in DOE's analysis.

II. Introduction

A. Authority

Section 413 of EISA directs DOE to: Establish standards for energy conservation in manufactured housing;

- Provide notice of and an opportunity for comment on the proposed standards by manufacturers of manufactured housing and other interested parties;
- Consult with the Secretary of HUD, who may seek further counsel from the Manufactured Housing Consensus Committee (MHCC); and
- Base the energy conservation standards on the most recent version of the IECC and any supplements to that document, except where DOE finds that the IECC is not cost effective or where a more stringent standard would be more cost effective, based on the impact of the IECC on the purchase price of manufactured housing and on total lifecycle construction and operating costs.

Section 413 of EISA also provides that DOE may:

Consider the design and factory construction techniques of manufactured housing;

- Base the climate zones under the proposed rule on the climate zones established by HUD in 24 CFR part 3280 rather than the climate zones under the IECC; and
- Provide for alternative practices that, while not meeting the specific standards established by DOE, result in net estimated energy consumption equal to or less than the specific energy conservation standards as proposed.

DOE is directed to update its standards not later than one year after any revision to the IECC. Finally, section 413 of EISA authorizes DOE to impose civil penalties on any manufacturer that violates a provision of part 460.

B. Background

1. Current Regulation of Manufactured Housing

Section 413 of EISA provides DOE with the authority to regulate energy conservation in manufactured housing, an area of the building construction industry traditionally regulated by HUD.

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[1] As stated in this preamble, DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2015, the year used for discounting the net present value of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO$_2$ reductions. For the latter, DOE used a range of discount rates, as shown in Table I.8. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2017 that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

HUD has regulated the manufactured housing industry since 1976, when it first promulgated the HUD Code. The purpose of the HUD Code has been to reduce personal injuries, deaths, property damage, and insurance costs, and to improve the quality, durability, safety, and affordability of manufactured homes. *See* 42 U.S.C. 5401(b).

The HUD Code includes requirements related to the energy conservation of manufactured homes. Specifically, Subpart F of the HUD Code, entitled "Thermal Protection," establishes requirements for U_o of the building thermal envelope. U_o is a measurement of the heat loss or gain rate through the building thermal envelope of a manufactured home; therefore, a lower U_o corresponds with a more insulated building thermal envelope. The HUD Code contains maximum requirements for the combined U_o value of walls, ceilings, floors, fenestration, and external ducts within the building thermal envelope for manufactured homes installed in different climate zones. *See* 24 CFR 3280.507(a).

The HUD Code also provides an alternate pathway to compliance that allows manufacturers to construct manufactured homes that meet adjusted U_o requirements based on the installation of high-efficiency heating and cooling equipment in the manufactured home. *See id.* 3280.508(d). Moreover, Subpart F of the HUD Code establishes requirements to reduce air leakage through the building thermal envelope. *See id.* 3280.505.

Subpart H of the HUD Code, entitled "Heating, Cooling and Fuel Burning Systems," establishes requirements for sealing air supply ducts and for insulating both air supply and return ducts. *See id.* 3280.715(a). *R*-value is the measure of a building component's ability to resist heat flow (thermal resistance). A higher *R*-value represents a greater ability to resist heat flow and generally corresponds with a thicker level of insulation. The HUD Code contains no requirements for fenestration SHGC, mechanical system piping insulation, or installation of insulation.

It is important to note that the statutory authority for DOE's rulemaking effort is different from the statutory authority underlying the HUD Code. EISA directs DOE to establish energy conservation standards for manufactured housing without reference to existing HUD Code requirements that also address energy conservation. In development of the proposed regulations, DOE seeks to make every effort to ensure that compliance with this proposed requirements would not impinge a manufacturer from complying with the requirements set forth in the HUD Code.

Additionally, DOE is seeking to avoid any potential redundancy between the proposed requirements and the HUD Code. Accordingly, section III.D of this document charts the relationship between the energy conservation requirements in the HUD Code and the proposed DOE requirements. Given the level of detail required in analyzing all aspects of energy conservation contained in both the proposed rule and the HUD Code, DOE requests comment on any potential inconsistencies that would result from promulgation of the proposed regulations.

2. The International Energy Conservation Code

The statutory authority for this rulemaking requires DOE to base its standards on the most recent version of the IECC and any supplements to that document, except where DOE finds that the IECC is not cost-effective or where a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total lifecycle construction and operating costs. *See* 42 U.S.C. 17071. The IECC is a nationally recognized model code, developed under the auspices of, and published by, the International Code Council (ICC), which many state and local governments have adopted in establishing minimum design and construction requirements for the energy efficiency of residential and commercial buildings, including site-built residential and modular homes. The IECC is developed through a consensus process that seeks input from industry stakeholders and is updated on a rolling basis, with new editions of the IECC published approximately every three years. The IECC was first published in 1998, and it has been updated continuously since that time. The 2015 edition of the IECC (the 2015 IECC) was published in May 2014.

Chapter 4 of the 2015 IECC sets forth specifications for residential energy efficiency, including specifications for building thermal envelope energy conservation, thermostats, duct insulation and sealing, mechanical system piping insulation, circulating hot water system piping, and mechanical ventilation. Chapter 4 of the 2015 IECC was developed for residential buildings generally and are not specific to manufactured housing. To the extent that the HUD Code regulates similar aspects of energy conservation as the 2015 IECC, the 2015 IECC is generally considered to be more stringent than the corresponding requirement in the HUD Code given that many areas of the HUD Code are not updated as frequently as the IECC.

3. Development of the Proposed Rule

Manufactured housing accounts for approximately six percent of all homes in the United States.[2] Because the purchase price of manufactured homes often is lower than similarly sized site-built homes, manufactured homes serve as affordable housing options, particularly for low-income families. Nevertheless, the operational costs to the homeowner may not be reflected in the purchase price of the home. Manufactured housing home owners often have higher utility bills than comparably built site-built and modular homes in part due to different criteria for energy conservation and variability among building codes and industry practice.

Establishing robust energy conservation requirements for manufactured homes would result in the dual benefit of substantially reducing manufactured home energy use and easing the financial burden on owners of manufactured homes in meeting their monthly utility expenses. Improved energy conservation standards are expected to provide nationwide benefits of reducing utility energy production levels that would in turn reduce greenhouse gas emissions and other air pollutants.

On February 22, 2010, DOE published an advance notice of proposed rulemaking (ANOPR) to initiate the process of developing energy conservation standards for manufactured housing and to solicit information and data from industry and stakeholders. *See* 75 FR 7556. The ANOPR identified thirteen specific issue areas on which DOE sought additional information. DOE received a total of twelve written comments in response to the ANOPR, all of which are available for public viewing at the regulations.gov Web page.[3]

DOE also has consulted with HUD in developing the proposed requirements and in obtaining input and suggestions that would increase energy conservation in manufactured housing while maintaining affordability. In addition to meeting with HUD on multiple occasions, DOE attended three MHCC meetings, where DOE gathered information from MHCC members. DOE also initiated further discussions with members of the manufactured housing industry following the issuance of the ANOPR, including the Manufactured Housing Institute and several of its member manufacturers, the State of California Department of Housing and Community Development, the State of Georgia Manufactured Housing Division, three private sector third-party primary inspection agencies under the HUD manufactured housing program, and one private sector stakeholder familiar with manufactured housing. A summary of each meeting is available at the regulations.gov Web page.

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[2] *See* U.S. Census Bureau, *American Housing Survey 2013—National Summary Tables.*

[3] The ANOPR comments can be accessed at: *http://www.regulations.gov/#!docketDetail;D=EERE-2009-BT-BC-0021.*

The following section provides a summary of comments DOE received in response to the ANOPR. Generally, the comments can be grouped into five main areas: Climate zones; the basis for the proposed standards; specific building thermal envelope requirements; enforcement of DOE's proposed energy conservation standards; and the need for, and scope of, the proposed rule.

Regarding the issue of climate zones, DOE received comments recommending that DOE define climate zones at the county level, possibly based on the climate zones established in the IECC or on a subset of those climate zones to align with the requirements for site-built homes. Generally, these commenters stated that the IECC climate zones are recognized and understood by the manufacturing and regulatory sectors. Conversely, DOE received other comments indicating a preference for retaining the three climate zones established in the HUD Code. DOE also received comments suggesting that DOE consider more refined climate zones in the southern United States, noting the abundance of manufactured homes sold in that region of the country. As discussed in section III.B.2.a) of the document, DOE proposes to base its energy conservation standards on four climate zones. DOE requests comment on the proposed use of four climate zones relative to adopting the three HUD climate zones and whether there are any potential impacts on manufacturing costs, compliance costs, or other impacts, in particular in Arizona, Texas, Louisiana, Mississippi, Alabama, and Georgia, where the agency has proposed two different energy efficiency standards within the same state.

DOE received numerous comments suggesting that DOE base its proposed energy conservation standards on the IECC rather than on the energy conservation standards established by HUD. Specifically, one commenter stated that IECC training and related support services would be available if DOE based its energy conservation standards on the IECC that would be absent if DOE used a different basis for the proposed energy conservation standards. Another commenter suggested that the proposed energy conservation standards should be at a minimum as efficient as the requirements contained in the most recent edition of the IECC or better where lifecycle cost effective. One commenter stated that the IECC was not intended to apply to manufactured housing and that DOE should consider altering IECC standards to be compatible with manufactured housing building processes. However, another commenter stated that there are no intrinsic differences between site-built and factory-built construction techniques that would limit DOE from proposing energy conservation standards to the level set forth in the most recent edition of the IECC and beyond.

Other commenters discussed specific energy conservation requirements that should be included in the proposed rule, including requiring high-efficiency furnaces, boilers, and heat pump heating in colder climate zones, high-efficiency air conditioners in warmer climate zones, ENERGY STAR appliances, and improved lighting systems, where cost-effective. Commenters also requested that DOE consider requiring *R*-5 windows, passive solar design, and establishing provisions to address barriers to future technology. Conversely, one commenter stated that the HUD Code balances requirements related to both air leakage and condensation. Other commenters requested that DOE consider the National Fire Protection Association (NFPA) Standard on Manufactured Housing in developing its proposed standards and that DOE also consider certain applicable requirements contained in the International Residential Code. Another commenter suggested that DOE develop standards that would allow above-code programs, such as ENERGY STAR, to build upon the requirements set forth by DOE. DOE also received several comments that manufactured homes should be as energy efficient as site-built and modular homes while asserting that DOE's energy conservation standards be no more stringent than the requirements for site-built housing. However, it also was suggested that DOE consider establishing one or more performance tiers above the minimum DOE energy conservation standards, with associated incentives for manufacturers, to drive the market for high performance manufactured housing.

As discussed further in section III.A of this document, DOE proposes to base its energy conservation standards on the 2015 IECC while accounting for the potential effects on purchase price, total lifecycle construction and operating costs, and design and factory construction techniques unique to manufactured homes.

With respect to the potential effects of the proposed rule on purchase price and total lifecycle construction and operating costs, DOE received comments providing specific information that assisted DOE in its preliminary economic analyses for developing the proposed requirements. Regarding the issue of home financing, commenters recommended that DOE's economic analysis on financing assume terms of loans similar to those for new site-built homes, accompanied by a three percent discount rate. Other commenters suggested that DOE's economic analyses assume terms of loans that reflect a mix of real estate and personal property loans that are reflective of the market share of each type of loan and that account for historical trends in loans for manufactured housing. Another commenter suggested that DOE account for conventional financing rates of five to seven percent and assume full resale recovery, as recognized by the National Automobile Dealers Association in appraisal value for ENERGY STAR-labeled manufactured homes.

It was suggested that DOE account for volume procurement purchasing prices, collect cost data from manufacturers and major suppliers provided in manufactured homes by state and region, and use standard industry mark-ups in conducting its economic analyses. Commenters also stated that any increase in the purchase price of a manufactured home could exacerbate the lack of affordable housing. Commenters further stated that although manufacturers offer manufactured homes that exceed the energy conservation requirements contained in the HUD Code, financing the cost of those additional energy features often is an obstacle to such homes being purchased. Accordingly, it was suggested that DOE apply the same analytical framework that DOE uses for developing energy efficiency standards for appliances in developing the proposed energy conservation standards. Specifically, one commenter suggested that DOE conduct parametric and statistical modeling analyses accounting for various factors, including single-wide versus multi-wide manufactured homes, differences among fuel types, duct locations, eliminating various "trade-offs," and evaluating solar thermal and photovoltaic systems in establishing the proposed standards.

With respect to design and construction techniques unique to manufactured homes, DOE received several comments highlighting that the manufactured housing industry has been producing manufactured homes that exceed the energy conservation requirements contained in the HUD Code. One commenter stated that since 1989, over 100,000 manufactured homes had been built in the Pacific Northwest region of the United States that have an energy efficiency level that complies with the most recent version of the IECC. Another commenter provided specific examples of manufactured homes that exceeded the energy conservation requirements contained in the HUD Code. Indeed, DOE received comments stating that 90 percent of manufactured housing builders had adopted the U.S. Environmental Protection Agency (EPA) ENERGY STAR program for manufactured housing. Another commenter suggested that DOE utilize research results and information from the DOE Building America Program and the Partnership for Advancing Technology in Housing program at HUD in developing the proposed energy conservation standards and in determining the costs and benefits of more stringent standards. It was suggested that DOE also evaluate products such as foam wall sheathing, innovative roof systems, and solar thermal and photovoltaic systems in developing the proposed energy conservation standards, and to obtain information from HVAC equipment manufacturers on available equipment efficiencies specific to manufactured homes.

With respect to design and construction techniques unique to manufactured homes, one commenter suggested that DOE adopt the energy efficiency specifications contained in the IECC unless something unique about the production of a manufactured home necessitated a different standard. Another commenter stated that DOE should coordinate with HUD on the development of the proposed rule and to make recommendations to HUD on non-energy-related issues for HUD consideration in updating the HUD Code. Specifically, it was suggested that DOE recognize exterior height and width limitations of manufactured homes in its proposed standards. DOE has attempted to address these comments by proposing thermal performance requirements that are similar to the HUD Code, while proposing other specific energy conservation requirements that are based on the requirements set forth in the 2015 edition of the IECC. DOE also has attempted to address unique aspects of manufactured homes in the proposed rule that would not be addressed by the proposed requirements for overall thermal performance.

Regarding specific building thermal envelope requirements, DOE received a number of comments requesting that DOE retain the thermal envelope performance approach set forth in the HUD Code, rather than component prescriptive measures, in order to facilitate application and use of innovative technology and materials. Another commenter suggested that DOE consider HUD's *U*-factor calculation manual in developing the proposed standards. As discussed in section III.B.2.b) of this document, DOE proposes to establish thermal envelope requirements as a function of the overall thermal transmittance of the building thermal envelope of a manufactured home for consistency with the approach set forth in the HUD Code. DOE also proposes prescriptive requirements as an alternative to the U_o requirement.

Regarding compliance with, and enforcement of, DOE's proposed energy conservation standards, DOE received a range of comments. First, DOE received comments suggesting that DOE rely on HUD's existing enforcement system rather than develop a separate DOE system of enforcement. Specifically, one commenter suggested that DOE consider using the existing HUD-approved third-party primary inspection agencies to ensure compliance with both HUD and DOE requirements for manufactured housing in order to avoid an increase in manufacturer fees and the creation of a duplicative system of compliance certification. Another commenter suggested that the HUD label be modified to reflect compliance with both the HUD and DOE requirements. Secondly, DOE received a comment that DOE develop a separate compliance certification system that would be independent of the existing HUD certification system. In this regard, it was suggested that DOE conduct in-plant and onsite inspections and audits using the DOE Building America Program and ENERGY STAR quality assurance protocols. It also was suggested that DOE's certification system "complement" the existing HUD system and that prospective DOE third-party certifiers receive adequate training to ensure that inspections would be conducted properly. Another commenter suggested that DOE rely on the EPA ENERGY STAR verification and labeling program to ensure compliance with the DOE energy conservation standards. One commenter suggested that DOE check the quality of construction while asserting that HUD should enforce violations of the DOE energy conservation standards. Furthermore, a commenter suggested that all manufactured homes be labeled using the DOE EnergySmart Home scale tool to demonstrate compliance with the proposed energy conservation standards.

Finally, DOE received comments questioning the need for the development of energy conservation standards, noting the state of the housing market and the time and cost associated with the process to develop such requirements. Conversely, DOE received other comments indicating that more stringent energy conservation requirements are "urgently needed" to prevent lost opportunities for energy and operating cost savings that are not currently being captured. DOE also was asked to consider adopting various energy efficiency improvements contained in the 2010 version of NFPA Standard 501. DOE received further comments indicating that the manufactured housing industry is in the unique position to meet national energy conservation goals while preserving home affordability. One commenter stated that increases in the purchase price of manufactured homes due to energy conservation improvements could raise issues of affordability without government subsidies or incentives. Another commenter similarly stated that raising energy conservation standards too quickly could impact manufacturers' ability to modify their in-plant production and site-installation processes and procedures. Other commenters requested that DOE delay the effective date of any energy conservation requirements due to current economic conditions in order to give manufacturers sufficient time to meet the new energy conservation standards. Finally, commenters urged DOE to consult and collaborate with HUD, EPA, and the manufactured housing industry in development of the proposed rule. DOE notes that it is required by statute to set forth energy conservation standards for manufactured homes, and DOE carefully has considered comments regarding the scope of the proposed rule in developing the energy conservation requirements proposed herein.

On June 25, 2013, DOE published a request for information (RFI) seeking information on indoor air quality, financing and related incentives, model systems of enforcement, and other studies and research relevant to DOE's effort to establish conservation standards for manufactured housing. (78 FR 37995) With regard to indoor air quality, one commenter mentioned that reductions in air leakage can lead to increased formaldehyde concentrations and noted that increased mechanical ventilation also can increase moisture infiltration in humid climates, potentially leading to deleterious impacts such as mold growth. Several other commenters noted that there have been no reported issues with occupant health in energy efficient homes that have been sealed tightly to reduce air infiltration. Moreover, commenters noted that a home that is equipped with proper mechanical ventilation, such as the mechanical ventilation level required by the HUD Code, is adequate to ensure indoor air quality. DOE is preparing the draft EA in parallel with this rulemaking, and it will be posted to the DOE Web site separately. This draft EA will discuss the relationship among indoor air quality, air leakage, and occupant health.

Comments on financing focused on the affordability of manufactured housing and the potential impacts of the proposed rule on the ability of purchasers of manufactured homes to qualify for financing. Commenters noted that increased costs associated with more energy efficient homes could have a negative impact on affordability in an industry in which the majority of home purchasers are low-income individuals and families. DOE has designed the proposed standards to achieve greater energy conservation in manufactured housing while accounting for the costs and benefits of the proposed standards on manufactured homeowners. In this regard, DOE has analyzed the lifecycle costs to low-income purchasers of manufactured homes (*see* chapter 9 of the TSD) and potential changes in manufactured home shipments in response to changes in purchase price (*see* chapter 10 of the TSD).

Commenters generally agreed that DOE should integrate a program of compliance and enforcement into the existing structure utilized by HUD. Commenters also noted, however, that DOE should maintain a role in overseeing enforcement of its standards. Although DOE is not considering compliance and enforcement in this proposed rule, DOE will consider these comments in a future rulemaking if appropriate.

DOE received other comments and data, including information on the average term of a manufactured housing loan. Another commenter stated that DOE should establish requirements that achieve the greatest possible energy conservation in manufactured housing, as the benefits of potential energy savings would outweigh potential increased purchase prices. Another commenter suggested that DOE develop standards that match the IECC as closely as possible. Finally, a commenter suggested that DOE abandon its rulemaking effort and begin the process anew while a set of joint commenters urged DOE to expedite publishing of a proposed rule. DOE has considered these comments in its analysis and the development of this proposed rule.

After reviewing the comments received in response both to the ANOPR and to the June 2013 RFI and other stakeholder input, DOE ultimately determined that development of proposed manufactured housing energy conservation standards would benefit from a negotiated rulemaking process. On June 13, 2014, DOE published a notice of intent to establish a negotiated rulemaking MH working group to discuss and, if possible, reach consensus on a proposed rule. *See* 79 FR 33873. On July 16, 2014, the MH working group was established under ASRAC in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act. *See* 79 FR 41456; 5 U.S.C. 561–70, App. 2. The MH working group consisted of representatives of interested stakeholders with a directive to consult, as appropriate, with a range of external experts on technical issues in development of a term sheet with recommendations on the proposed rule. The MH working group consisted of 22 members, including one member from ASRAC and one DOE representative. The MH working group met in person during six sets of public meetings held in 2014 on August 4–5, August 21–22, September 9–10, September 22–23, October 1–2, and October 23–24. *See* 79 FR 48097; 79 FR 59154.

On October 31, 2014, the MH working group reached consensus on energy conservation standards in manufactured housing and assembled its recommendations for DOE into a term sheet that was presented to ASRAC. *See* public docket EERE–2009–BT–BC–0021–0107 (Term Sheet). ASRAC approved the term sheet during an open meeting on December 1, 2014, and sent it to the Secretary of Energy to develop a proposed rule.

On February 11, 2015, DOE published an RFI (the 2015 RFI) requesting information that would aid in its determination of proposed SHGC requirements for certain climate zones. (80 FR 7550) One commenter indicated that DOE's negotiated rulemaking process was analytically flawed and made many procedural errors in carrying out the rulemaking process, including the operation of the MH working group and the interpretation of the underlying statutory directive on accounting for cost-effectiveness. This commenter also provided alternative cost data for use in the cost-benefit analysis. DOE has included a more detailed discussion of the comments received in response to the request for information in section III.B of this document.

Following preparation and submission of the term sheet by the MH working group, DOE engaged in further consultation with HUD regarding DOE's proposed energy conservation standards. In addition to meeting with HUD, DOE prepared two presentations to discuss the proposed rule with the MHCC members, designed to gather information on the development of the proposed standards.

DOE has considered all information ascertained from HUD, state agencies, the manufactured housing industry, and the public in developing the proposed rule. In an attempt to understand how certain requirements included in DOE's proposed rule would impact other aspects of the design and construction of manufactured homes, DOE also has carefully reviewed the HUD Code to ensure that the proposed rule would avoid unintended conflicts with HUD requirements both related and unrelated to energy conservation.

The MH working group was established to negotiate energy conservation standards for manufactured housing and did not address options for systems of compliance and enforcement. DOE thus has not included proposed compliance and enforcement provisions in this document. DOE maintains its authority to address these issues in a future rulemaking.

DOE also has not included proposed provisions related to waivers or exception relief that would be available to manufacturers in achieving compliance with this Part. Regarding waivers, DOE is interested in receiving information on whether a process is warranted by which a manufacturer could petition DOE for relief from an individual requirement. DOE also seeks public input on whether to establish proposed provisions for exception relief, which would be warranted in instances in which compliance with the proposed regulations would result in serious hardship, gross inequity, or unfair distribution of burdens on the part of a manufacturer. DOE may consider including proposed provisions in this regard in a future rulemaking.

III. Discussion

A. The Basis for the Proposed Standards

EISA requires that DOE establish energy conservation standards for manufactured housing that are "based on the most recent version of the [IECC] . . . , except in cases in which [DOE] finds that the [IECC] is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the [IECC] on the purchase price and on total life-cycle construction and operating costs." *See* 42 U.S.C. 17071(b). Given that the 2015 edition of the IECC (the 2015 IECC) constitutes "the most recent version of the IECC," the MH working group based its recommendations on the specifications included in the 2015 IECC that are appropriate for manufactured homes, which DOE has considered in developing the proposed rule.

As noted above, the 2015 IECC applies generally to residential buildings, including site-built and modular housing, and is not specific to the manufactured housing industry. Consistent with the recommendations of the MH working group, DOE proposes standards that are based on certain specifications included in the 2015 IECC and that account for the unique aspects of manufactured housing. DOE carefully considered the following aspects of manufactured housing design and construction in developing the proposed standards:

- Manufactured housing structural requirements contained in the HUD Code;
- External dimensional limitations associated with transportation restrictions;
- The need to optimize interior space within manufactured homes; and
- Factory construction techniques that facilitate sealing the building thermal envelope to limit air leakage.

Based on these considerations, and consistent with the recommendations of the MH working group, DOE is proposing certain requirements that differ from similar provisions contained in the 2015 IECC. These include presenting the building thermal envelope requirements in terms of U_o of the entire building thermal envelope, accounting for space limitations in ceiling assemblies when establishing insulation requirements and other revisions to ensure the text is applicable to manufactured housing.

Additionally, the MH working group recommended, and DOE considered, in developing this proposed rule the potential effects on purchase price and total lifecycle construction and operating costs, design and factory construction techniques unique to manufactured homes, and the impacts of reliance on the climate zones established by HUD and as set forth in the 2015 IECC. A detailed discussion of each of these issues is contained in chapter 8 of the TSD and sections III.B and III.C of this document.

The following section discusses in detail the proposed energy conservation standards as set forth in the proposed rule. Subpart A as proposed contemplates the scope of the proposed standards, proposed definitions of key terms, and other commercial standards that would be incorporated by reference into this part. The subpart also proposes a compliance date of one year following the publication of the final rule.

Proposed subpart B would include energy conservation requirements associated with the building thermal envelope of a manufactured home according to the climate zone in which the home is located. DOE proposes to base its building thermal envelope energy conservation standards on four climate zones, which generally follow state borders with some exceptions. DOE proposes two options to ensure an appropriate level of thermal transmittance through the building thermal envelope. The first approach contemplates prescriptive requirements for components of the building thermal envelope. The second is a performance-based approach under which a manufactured home would be required to achieve a maximum U_o in addition to fenestration *U*-factor and SHGC requirements. Subpart B also would establish prescriptive requirements for insulation and sealing the building thermal envelope to limit air leakage.

Subpart C would include requirements related to duct leakage; HVAC thermostats and controls; service water heating; mechanical ventilation fan efficacy; and equipment sizing.

As noted in this preamble, EISA requires DOE to update its energy conservation standards for manufactured housing not later than one year after any revision to the IECC. Pursuant to this statutory direction, DOE intends to update its energy conservation standards for manufactured housing, if promulgated, within one year of the publication of any revision to the 2015 IECC. This proposed rule invites comments on all DOE proposals and issues presented herein, and requests comments, data, and other information that would assist DOE in developing a final rule.

B. Proposed Energy Conservation Requirements

1. Subpart A: General

(a) § 460.1 Scope

Pursuant to section 413 of EISA, Congress directed DOE to establish standards for energy conservation in manufactured housing. Section 460.1 would restate the statutory requirement and introduce the scope of the proposed requirements. Section 460.1 also would require manufactured homes that are manufactured on or after one year following publication of the final rule to comply with the requirements established in part 460.

DOE proposes a one-year period following publication of a final rule to allow manufacturers to transition their designs, materials, and factory operations and processes to comply with the finalized DOE energy conservation standards and regulations. A one-year notice period is common industry practice for amendments to the IECC and other changes to building codes; however, DOE seeks input on whether these standards are analogous to IECC or whether they would impose a different level of manufacturer research and effort to comply. In addition, DOE seeks comment on whether additional lead time is necessary to harmonize compliance and enforcement with HUD's manufactured housing program, redesign manufactured housing to meet the standards, and test and certify the new designs. The agency also requests comment on whether there are any particular timing considerations that the agency should consider due to manufacturers choosing to comply with either the prescriptive or thermal envelope compliance paths. DOE requests comment on the scope and effective date of the proposed rule and whether the proposed effective date would provide manufacturers sufficient lead time to prepare to comply with the standards.

(b) § 460.2 Definitions

Section 460.2 would define key terms used throughout the proposed regulations, many of which were derived from either the 2015 IECC or the HUD Code, with modifications where further clarification was needed in the context of manufactured housing. Proposed definitions based on terms included in the 2015 IECC were developed in accordance with recommendations from the MH working group. *See* Term Sheet at 1. DOE has included a discussion of each of the proposed definitions in the following paragraphs.

(a) Accessible. DOE proposes to adopt the definition of the term "accessible" from the 2015 IECC while clarifying that the definition would allow access to certain labels or control interfaces that require close approach upon inspection or repair.

(b) Air barrier. The term "air barrier" also would be based on the definition of the same term in the 2015 IECC while clarifying that an air barrier could consist of a single material or combination of materials. DOE intends for the definition of this term to include the materials involved in limiting air leakage to meet air sealing requirements and requests comment on whether further clarification is needed on the meaning in this regard.

(c) Automatic. DOE proposes to adopt the definition of the term "automatic" from the 2015 IECC. The terms "automatic" and "manual" would differentiate between controls that are operated by impersonal (automatic) and personal (manual) influences.

(d) Building thermal envelope. DOE has derived the proposed definition of "building thermal envelope" from the definition of the same term in the 2015 IECC, with revisions that account for the manner in which manufactured homes are designed and constructed. The proposed definition does not include basement walls, for example, given the unique construction of a manufactured home relative to a site-built home.

(e) Ceiling. DOE proposes to define the term "ceiling," which is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed prescriptive standards of part 460.

(f) Circulating hot water system. DOE would define the term "circulating hot water system" to be consistent with the 2015 IECC to describe water distribution systems in a manufactured home that uses a pump to circulate water between water-heating equipment and fixtures.

(g) Climate zone. DOE proposes to define the term "climate zone" in accordance with the term as defined in the 2015 IECC, with revisions as applicable to the specific geographic regions set forth in the proposed rule. The proposed rule establishes different energy conservation standards for manufactured homes located in different climate zones.

(h) Conditioned space. DOE would adopt the definition of the term "conditioned space" from the 2015 IECC to describe areas, rooms, or spaces that are enclosed within the building envelope.

(i) Continuous air barrier. DOE proposes to adopt the definition of the term "continuous air barrier" from the 2015 IECC to encompass the material or combination of materials that limit air leakage through the building thermal envelope.

(j) Door. DOE would define the term "door," which is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed prescriptive standards of part 460.

(k) Dropped ceiling. DOE proposes to define the term "dropped ceiling," which is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed standards under §§ 460.103(a) and 460.104.

(l) Dropped soffit. DOE would define the term "dropped soffit," which also is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed prescriptive standards under §§ 460.104(a) and 460.104.

(m) Duct. DOE proposes to adopt the definition of the term "duct" from the 2015 IECC to include tubes or conduits, except air passages within a self-contained system, used for conveying air to or from heating, cooling, or venting equipment.

(n) Duct system. DOE proposes to define the term "duct system" as derived from the meaning of the term under the 2015 IECC to refer to a continuous passageway for the transmission of air, composed of ducts and other required accessories.

(o) Eave. DOE would define the term "eave," which is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed prescriptive standards under §§ 460.103(a) and 460.104.

(p) Equipment. DOE proposes to define the term "equipment," which is not defined in the 2015 IECC or the HUD Code, to add further clarification to the meaning of the proposed prescriptive provisions of this part.

(q) Exterior wall. DOE proposes to adopt the definition of the term "exterior wall" from the 2015 IECC and describes walls that enclose conditioned space.

(r) Fenestration. DOE would derive the definition of the term "fenestration" from the 2015 IECC, which encompasses both vertical fenestration and skylights. DOE requests comment on whether to amend the definition of "fenestration" to include tubular daylighting devices.

(s) Floor. DOE proposes to define the term "floor," which is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed prescriptive standards of part 460.

(t) Glazed or glazing. DOE would define the terms "glazed" or "glazing," which are not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed prescriptive standards of this Part and for consistency with the meaning of the terms as used in the National Fenestration Rating Council Standard 100–2004.

(u) Infiltration. DOE proposes to adopt the definition of the term "infiltration" from the 2015 IECC, which describes the uncontrolled air leakage into a manufactured home.

(v) Insulation. DOE would define the term "insulation" to mean material qualifying as "insulation" for consistency with the U.S. Federal Trade Commission definition of insulation and to ensure specificity with the proposed standards of part 460.

(w) Manufactured home. DOE proposes to adopt the same definition of "manufactured home" as used in the HUD Code in order to ensure consistency among both agencies' regulations.

(x) Manufacturer. As discussed below, the underlying statutory authority for this rulemaking does not define the term "manufacturer." DOE proposes to adopt the definition of the term under the HUD Code to mean any person engaged in the factory construction or assembly of a manufactured home, including any person engaged in import of a manufactured home for resale.

(y) Manual. DOE proposes to define the term "manual" to be consistent with the 2015 IECC. As stated in this preamble, the terms "automatic" and "manual" would differentiate between controls that are operated by impersonal (automatic) and personal (manual) influences.

(z) *R*-value (thermal resistance). DOE would adopt the definition of the term "*R*-value" from the 2015 IECC to refer to a defined quantitative measure of the resistance to heat flow of a material or assembly of materials.

(A) Rough opening. The term "rough opening," which is not defined in the 2015 IECC or the HUD Code, would identify the location corresponding to the area of an assembly containing fenestration.

(B) Service hot water. DOE proposes to adopt the definition of the term "service hot water" from the 2015 IECC to refer to the supply of hot water for uses other than space or comfort heating, such as for bathing.

(C) Skylight. DOE proposes to define the term "skylight" based on the meaning of the term in the 2015 IECC, clarifying that the term includes the entire assembly of glass or other transparent or translucent glazing material and the frame, installed at a slope of less than 60 degrees from the horizontal.

(D) Solar heat gain coefficient (SHGC). DOE would adopt the definition of the term "solar heat gain coefficient" from the 2015 IECC. SHGC is an important property of transparent or translucent fenestration that affects the heat gain and loss of the building thermal envelope. The SHGC of a fenestration assembly is defined as the ratio of the amount of solar heat gain transmitted or reradiated through the assembly to the amount of incident solar radiation.

(E) State. The term "state" would include each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa.

(F) Thermostat. DOE proposes to adopt the definition of the term "thermostat" from the 2015 IECC to describe automatic control devices used to maintain a given temperature.

(G) *U*-factor (thermal transmittance). DOE would adopt the definition of the term "*U*-factor" from the 2015 IECC to refer to a defined quantitative measure of the transmittance of heat of a material or assembly of materials.

(H) U_o (overall thermal transmittance). DOE proposes to define the term U_o (overall thermal transmittance), which is not defined in the 2015 IECC or HUD Code, as the coefficient of heat transmission (air to air) through the entire building thermal envelope, equal to the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films.

(I) Ventilation. DOE proposes to adopt the definition of the term "ventilation" from the 2015 IECC to refer to the supply or removal of air from any space by natural or mechanical means.

(J) Vertical fenestration. DOE would adopt the definition of the term "vertical fenestration" from the 2015 IECC to include materials, such as windows and doors that may be glazed or opaque, installed at an angle of greater than or equal to 60 degrees from horizontal.

(K) Wall. DOE proposes to define the term "wall," which is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed standards under this Part.

(L) Whole-house mechanical ventilation system. DOE proposes to adopt the definition of the term "whole-house mechanical ventilation system" from the 2015 IECC to refer to a mechanical system that is designed to exchange indoor air with outdoor air either periodically or continuously.

(M) Window. DOE proposes to define the term "window," which is not defined in the 2015 IECC or the HUD Code, to ensure specificity with the proposed standards under this part.

(N) Zone. DOE would adopt the definition of the term "zone" from the 2015 IECC to apply to controls within a manufactured home and to refer to a space or group of spaces within a manufactured home with sufficiently similar requirements for heating and cooling that can be maintained using a single controlling device.

DOE would not include certain definitions that are contemplated in the 2015 IECC, including "above-grade wall," "addition," "alteration," "approved," "approved agency," "basement wall," "building," "building site," "C-factor," "code official," "commercial building," "conditioned floor area," "continuous insulation," "curtain wall," "demand recirculation water," "DOE," "energy analysis," "energy cost," "energy simulation tool," "energy rating index (ERI) reference design," "fenestration product," "site-built," "F-factor," "heated slab," "high-efficacy lamps," "historic building," "insulating sheathing," "insulated siding," "labeled," "listed," "low-voltage lighting," "proposed design," "rated design," "readily accessible," "repair," "reroofing," "residential building," "roof assembly," "roof recover," "roof repair," "roof replacement," "standard reference design," "sunroom," "thermal envelope," "thermal isolation," "ventilation air," and "visible transmittance." These terms are either not relevant to manufactured housing or not relevant to the energy conservation requirements proposed in this subpart.

DOE requests comment on each of the proposed definitions and seeks input on the need for additional clarification to ensure consistency among the HUD Code and general industry practice.

(c) § 460.3 Materials Incorporated by Reference

DOE proposes to incorporate certain materials by reference in the proposed rule, including Air Conditioning Contractors of America (ACCA) Manual J; ACCA Manual S; and "Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes" by Conner and Taylor (the Battelle Method). ACCA Manuals J and S would be incorporated by reference in accordance with § 460.205 of this subpart and would relate to the selection and sizing of heating and cooling equipment. The Battelle Method is an industry standard methodology for calculating the overall thermal transmittance of a manufactured home. The Battelle method currently is referenced in the HUD Code for calculation of overall thermal transmittance. To maintain consistency with the practices of the manufactured home industry, DOE has determined these materials are appropriate for inclusion in the proposed rule.

2. Subpart B: Building Thermal Envelope

DOE proposes to establish energy conservation standards for manufactured housing based on the size and geographic location of a home, as doing so would allow DOE to capture a more accurate balance between energy conservation and cost-effectiveness in developing its standards. For example, manufactured homes frequently are identified by size, including single-section and multi-section homes. Manufactured homes of varying size are capable of reaching different levels of energy conservation based on the ratio of floor square footage to building thermal envelope surface area. A single energy conservation standard for manufactured homes of all sizes thus would be more difficult to achieve in a single-section homes as compared to a multi-section home. Consistent with the recommendations of the MH working group, DOE proposes to establish different standards for manufactured homes located in different regions of the country and for manufactured homes of different size. Subpart B reflects DOE's proposed approach in this regard, and DOE requests comment in this regard.

(a) § 460.101 Climate Zones

Pursuant to EISA, DOE may consider basing its energy conservation standards on the climate zones established by HUD rather than on the climate zones contained in the IECC. *See* 42 U.S.C. 17071(b)(2)(B). The potential for climatic differences to affect energy consumption supports an approach in which energy conservation standards account for geographic differences in climate. For example, the appropriate level of insulation for a manufactured home located in southern Florida would not necessarily be appropriate for a manufactured home located in New Hampshire.

As indicated in Figure III.1, the HUD Code divides the United States into three distinct climate zones for the purpose of setting its building thermal envelope requirements, the boundaries of which are separated along state lines. Conversely, as indicated in Figure III.2, section R301.1 of the 2015 IECC divides the country into eight climate zones, the boundaries of which are separated along county lines. The 2015 IECC also provides requirements for three possible variants (dry, moist, and marine) within certain climate zones, as indicated in Figure III.2. The HUD Code climate zones were developed to be sensitive to the manner in which the manufactured housing industry constructed and placed manufactured homes into the market. The 2015 IECC climate zones are separated along county lines to reflect a more accurate overview of climate distinctions within the United States and to facilitate state and local enforcement of the IECC for residential and commercial buildings, including site-built and modular construction.

Figure III.1 Climate Zones in the HUD Code

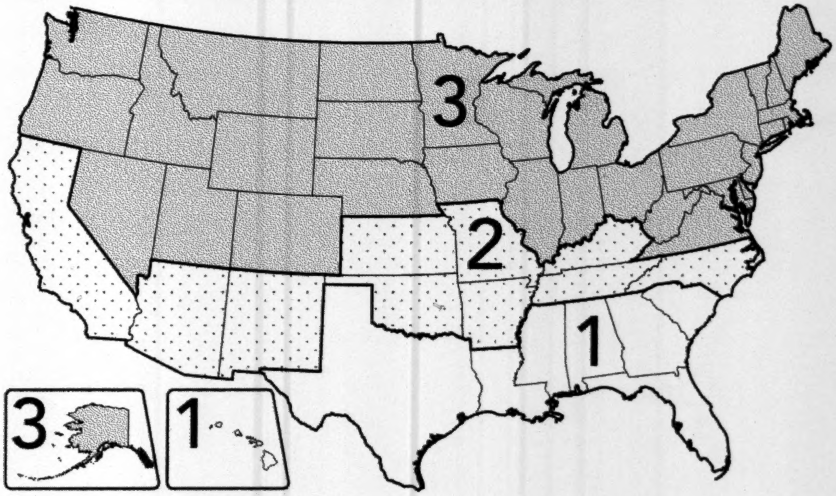
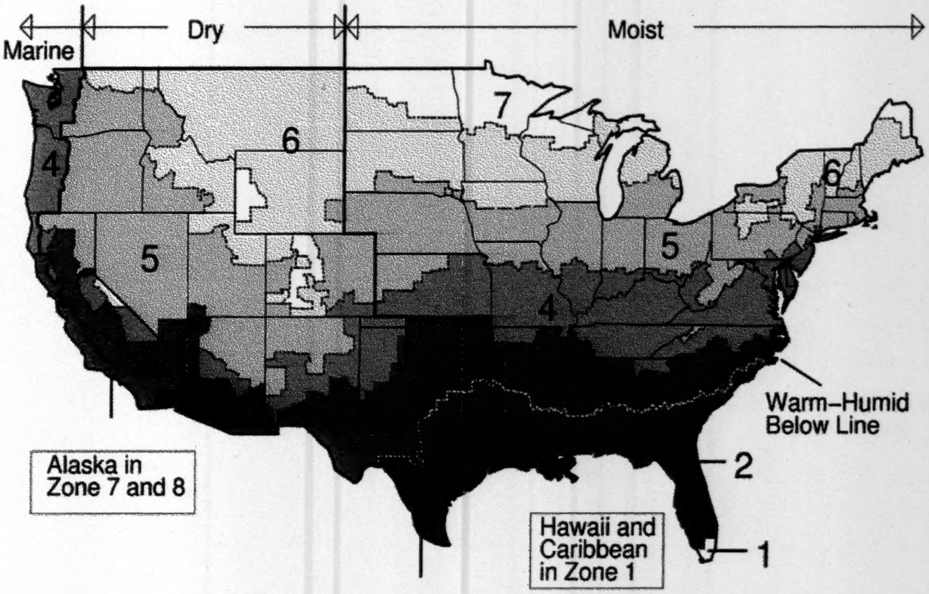


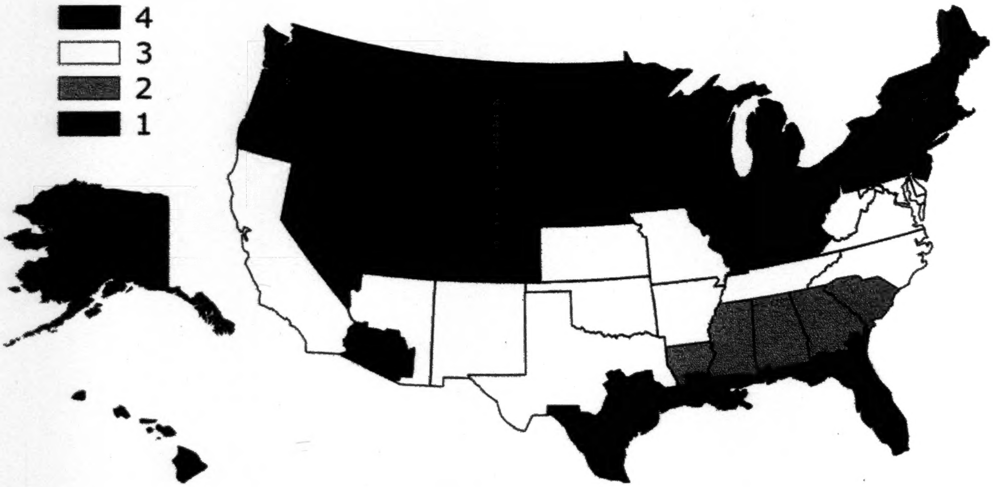
Figure III.2 Climate Zones in the 2015 IECC



The 2015 IECC includes climate zone-specific prescriptive energy conservation specifications for the building thermal envelope. In accounting for the design and factory construction techniques for manufactured homes, the MH working group recommended that DOE perform a LCC analysis on various cities located in each of the 2015 IECC climate zones. The MH working group also recommended that DOE incorporate into its LCC analysis several alternatives to certain 2015 IECC prescriptive specifications, including alternative levels of insulation in ceilings, walls, and floors.

DOE calculated the LCC for various alternatives to the 2015 IECC prescriptive specifications for 19 cities, representing a geographically diverse set of climates, with at least one city in each of the 2015 IECC climate zones. As discussed in greater detail in section III.B.2.b of this document and chapters 6 and 8 of the TSD, DOE's LCC analysis demonstrated that common building thermal envelope requirements for multiple groups of cities proved to be most cost-effective. After reviewing DOE's LCC analysis, the MH working group recommended that DOE establish four climate zones that placed cities with the same set of most-cost-effective building thermal envelope requirements in the same climate zone. The MH working group found that a four climate zone approach would improve upon the HUD Code climate zones with regard to energy conservation by more accurately distinguishing among regions with similar climates while simultaneously minimizing the extensive subdivisions of states found in the 2015 IECC. Consistent with the recommendations of the MH working group[4] and as illustrated in Figure III.3, § 460.101 would establish a new climate zone arrangement that reflects the advantages of both the HUD Code and the 2015 IECC climate zones. *See* Term Sheet at 2.

Figure III.3 Proposed Climate Zones



If DOE's proposed energy conservation standards adopted the eight climate zones established in the 2015 IECC, 40 states would be divided into two or more climate zones. Although the 2015 IECC climate zones more precisely account for climatic conditions that affect energy use in the United States, any loss of accuracy in addressing climatic differences is negligible compared to the impracticality to the manufactured housing industry of designing and constructing manufactured homes that comply with eight different sets of climate zone requirements and planning home shipments based on individual states with multiple climate zones. A large number of climate zones, particularly within a state, would burden the manufactured housing industry because manufacturers are not always certain of the eventual destination of a home during the manufacturing process. That is, although some manufactured homes are custom orders where the destination is known prior to manufacture, many other manufactured homes are stocked as inventory with manufactured housing dealers. In particular, manufactured housing dealers and installers in states with multiple climate zones would encounter increased complexities associated with ordering, stocking, selling, installing, and servicing manufactured homes.

Although DOE generally prioritized establishment of a single climate zone per state where appropriate, the size or varied climate of certain states necessitated two climate zones in some instances. DOE's proposed climate zones bifurcate Texas, Louisiana, Alabama, Mississippi, Georgia, and Arizona. Data indicates that the inland climate of Texas, Louisiana, Alabama, Mississippi, and Georgia varies significantly from these states' coastal climates along the borders of the Gulf of Mexico. Similarly, southwestern Arizona exhibits different weather patterns from the rest of the state.

DOE requests comment on the proposal to establish four climate zones as well as input with regard to categorization of states and counties that comprise each climate zone. To the extent that a particular approach is advocated, commenters also should provide analyses and data on the potential impact to the costs and benefits of the proposed rule. DOE also requests comment on the need for additional training of state and local building officials who must be familiar with the requirements of two rather than one climate zone.

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[4] The term sheet named the four climate zones 1A, 1B, 2, and 3. DOE proposes to rename these climate zones as 1 (former climate zone 1A), 2, (former climate zone 1B), 3 (former climate zone 2), and 4 (former climate zone 3).

(b) § 460.102 Building Thermal Envelope Requirements

Section 460.102 would establish requirements related to the building thermal envelope, which includes the materials within a manufactured home that separate the interior conditioned space from the exterior of the building or interior spaces that are not conditioned space. As discussed in this preamble, § 460.102(a) would establish two approaches to ensure that the building thermal envelope would meet more stringent energy conservation levels: A prescriptive option and a maximum U_o option.

In developing recommendations under this section, the MH working group carefully considered section R402.1 of the 2015 IECC, which sets forth two primary compliance pathways. First, sections R402.1.2 and R402.1.4 of the 2015 IECC contain climate zone-specific prescriptive building thermal envelope component *R*-value requirements, prescriptive fenestration *U*-factor requirements, and prescriptive SHGC requirements. Second, section R402.1.5 of the 2015 IECC provides an alternate pathway to compliance, which allows for a home to be constructed using a variety of materials as long as the entire building thermal envelope has a singular total *UA* value[5] that is less than or equal to the sum of the component *U*-factor requirements under section R402.1.4 multiplied by the surface area of the building thermal envelope components. The first option is referred to as a "prescriptive-based approach" and the second option is referred to as a "performance-based approach."

DOE considered developing proposed requirements in line with either a prescriptive-based approach or a performance-based approach for specific assemblies that comprise the building thermal envelope. Ultimately, however, and consistent with the recommendation of the MH working group, DOE determined that allowing manufacturers to choose between two pathways for compliance would realize cost-effective energy savings for homeowners while providing for flexibility within the manufactured housing industry. *See* Term Sheet at 3–4.

The prescriptive approach would establish specific component *R*-value, *U*-factor, and SHGC requirements, providing a straightforward option for construction planning. This pathway would facilitate the ease of compliance but would restrict manufacturer flexibility in making trade-offs, such as increasing insulation levels in some building thermal envelope components while decreasing insulation levels in other building thermal envelope components.

In contrast, the performance-based approach would allow a manufactured home to be constructed using a variety of different materials with varying thermal properties so long as the building thermal envelope achieved a required level of overall thermal performance. The performance-based approach thus would provide manufacturers with greater flexibility in identifying and implementing cost-effective approaches to building thermal envelope design. The performance-based approach is familiar to the manufactured housing industry, as this approach is the basis for the building thermal envelope requirements under the HUD Code. The proposed performance-based requirements would be intended to be functionally equivalent to the prescriptive-based requirements in that both options would result in manufactured homes with approximately the same amount of energy use.

DOE requests comment on the proposal to set forth prescriptive and performance options for the purpose of compliance with the proposed building thermal envelope requirements. In particular, DOE requests comment on the requirements of each pathway as well as their equivalency in terms of overall thermal performance.

The proposed prescriptive building thermal envelope requirements under § 460.102(b) are stated in terms of minimum *R*-value and maximum *U*-factor and SHGC requirements. The MH working group recommended the prescriptive values set forth in Table III.3 that DOE has adopted in this rulemaking by assessing and revising the 2015 IECC specifications to ensure cost-effectiveness based on the impact on the purchase price of manufactured homes and on total lifecycle construction and operating costs. *See* Term Sheet at 3.

TABLE III.1—PROPOSED BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Ceiling *R*-value	Wall *R*-value	Floor *R*-value	Window *U*-factor	Skylight *U*-factor	Door *U*-factor	Glazed fenestration SHGC
1	30	13	13	0.35	0.75	0.40	0.25.
2	30	13	13	0.35	0.75	0.40	0.33.
3	30	21	19	0.35	0.55	0.40	0.33.
4	38	21	30	0.32	0.55	0.40	No Rating.

As discussed in greater detail in chapter 6 of the TSD, DOE developed the requirements included in § 460.102(b), as illustrated in Table III.1, by evaluating the cost-effectiveness of the 2015 IECC building thermal envelope specifications and alternatives to these specifications. DOE performed LCC analysis for all alternatives to the 2015 IECC specifications that were recommended by the MH working group, in order to assist in the development of cost-effective standards under this rule.

The MH working group requested that DOE evaluate variations in the *R*-value requirement for ceilings, walls, and floors, and the *U*-factor requirement for windows, to determine the impact on cost-effectiveness relative to the 2015 IECC requirements. Upon analyzing a range of ceiling insulation requirements from *R*-22 to *R*-38, wall insulation requirements from *R*-13 to *R*-21, floor insulation requirements from *R*-13 to *R*-38, and window U-factor requirements from 0.40 to 0.31, DOE has proposed the most cost-effective energy conservation requirement for each climate zone, as included in Table III.1.

The MH working group also requested that DOE conduct sensitivity analyses of window SHGC. *See* Term Sheet at 3. In climate zone 1, DOE analyzed a range of window SHGC from 0.25 to 0.40. DOE is proposing the most cost-effective

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[5] Total *UA* is a metric that is very similar to U_o that typically is used in the context of site-built construction. Section R402.1.5 of the 2015 IECC uses the metric "total *UA*," which denotes the sum of each building thermal envelope component's *U*-factor multiplied by the assembly area of the component. This metric is referred to as "U_o" in the manufactured housing industry and serves the same function as "total *UA*."

SHGC requirement for climate zone 1, as included in Table III.1. In climate zone 4, the MH working group requested that DOE not run sensitivity analyses for different SHGC options for most cities found in climate zone 4. SHGC has a smaller impact on energy use in regions dominated by heating rather than cooling loads. In these locations, more stringent SHGC requirements can lead to increased energy consumption by blocking the solar heating effects of sunlight. For these reasons, the MH working group proposed to not modify the 2015 IECC specification of no requirement, and DOE is incorporating the 2015 IECC specification of no SHGC requirement for proposed climate zone 4. Please see chapter 6 of the TSD for additional detail on DOE's SHGC sensitivity analyses.

The MH working group also recommended that DOE perform a sensitivity analysis of the total cost of ownership to determine the most cost-effective SHGC for climate zones 2 and 3. *See* Term Sheet at 3. DOE recognizes that many variables affecting the selection of recommended SHGC values were discussed by the MH working group over the course of multiple public meetings. At the recommendation of the MH working group, DOE studied the potential economic impacts of several SHGC values with the intent of proposing prescriptive SHGC requirements that provide the greatest economic benefit. Economic impact was the primary decision tool used in proposing prescriptive SHGC values, and DOE has prepared an economic analysis that supports different SHGC requirements for climate zones 2 and 3. DOE specifically found that an SHGC of 0.30 was the most cost-effective SHGC value based on a 10-year cost of ownership savings calculation. *See* 80 FR 7550. In arriving at this value, DOE placed all windows on one side of the manufactured home, with the windows facing west. DOE used this window orientation in its sensitivity analysis in order to arrive at SHGC values that would have the greatest impact on energy savings. DOE sought public input on this methodology and analysis in the 2015 RFI. *See* 80 FR 7550.

In response to the 2015 RFI, several commenters stated that factors other than total cost of ownership should be considered when proposing a prescriptive SHGC requirement. One commenter suggested that the total cost of ownership analysis should not be the sole consideration for choosing the SHGC requirement and that DOE should consider the 2015 IECC SHGC specifications, lifecycle costs, potential impacts on the purchase price of manufactured housing, air conditioner down-sizing and cost savings opportunities, reductions in peak electric loads, and manufacturer benefits in harmonizing SHGC across climate zones. Another commenter suggested that equipment downsizing, reduction in peak demand, improved occupant comfort leading to behavioral changes in adjusting a thermostat, synchronizing with the 2015 IECC, and lifecycle costs should be considered as a basis for the proposed SHGC requirements. The commenter also recommended that an SHGC of 0.25 in climate zones 1, 2, and 3 would be beneficial, as doing so would establish only two window requirements (SHGC of 0.25 in climate zones 1, 2, and 3; and no SHGC requirement for climate zone 4) and would simplify and streamline the purchasing of windows for manufacturers of manufactured homes.

Other commenters noted that placing all windows on one side of a manufactured home with the assumption that all windows face west was an atypical assumption. The commenters suggested that window orientation should follow the same "industry average" convention used in all other assumptions used in DOE's SHGC analysis. The commenters presented analysis based on their assessment of industry averages to demonstrate that such assumptions would support an SHGC requirement of 0.33; however, this analysis included assumptions that differed from those agreed upon by the MH working group, including window-to-floor area, window shading, and window cost. The commenters also noted that a group of windows with a weighted SHGC of 0.30 would require a mixture of window products of dissimilar aesthetic. Finally, the commenters believed that the likely industry response to a 0.30 SHGC requirement would be to assemble manufactured homes with a single window product SHGC value closer to 0.25. DOE also received a comment that supported the window orientation that DOE employed in its analysis, recommending that the analysis properly based SHGC assumptions on window orientation that would experience the highest energy use.

In response to the aforementioned comments, DOE determined that the window orientation assumption used in its SHGC analysis was inconsistent with other analytical assumptions under the proposed rule, as a more representative SHGC analysis would place windows uniformly on all sides of a manufactured home. Although the assumption of all windows facing west represents the highest energy use window orientation, manufactured homes with other window orientations would not experience as large an economic benefit. DOE also found no reason to deviate from the other assumptions in the submitted analysis (window-to-floor area, window shading, and window cost) that formed the basis of the MH working group's deliberations and recommendations. Finally, DOE notes that factors such as lifecycle costs, potential impacts on the purchase price of manufactured housing are included in its analysis.

DOE did not include air conditioner down-sizing and cost savings opportunities in its SHGC analysis. Although in some instances a manufacturer may be able to install a smaller air conditioner, for example, leading to reduced energy costs and a lower purchase price, this is not always possible. DOE did not prioritize peak electric load reduction over lifecycle cost savings to individual manufactured homeowners under its analysis. Finally, while equivalent SHGC requirements across climate zones could simplify window procurement for manufacturers, DOE notes that manufacturers could elect to use the same window types for manufactured homes shipped to any climate zone in accordance with the proposed rule.

DOE repeated its SHGC sensitivity analysis of climate zones 2 and 3 using a uniform window orientation to study the economic impacts of SHGC values of 0.25, 0.30, and 0.33. This analysis indicated SHGC of 0.33 had the greatest total cost of ownership savings; therefore, DOE proposes requiring SHGC of 0.33 in climate zones 2 and 3. Because the sensitivity analysis performed for climate zone 1 during the negotiated consensus process used the original assumption of uniform window distribution, this analysis was not repeated for climate zone 1.

For skylight *U*-factor requirements, the MH working group did not request that DOE evaluate the effect of variations of the 2015 IECC requirements on cost-effectiveness. Because there were LCC savings associated with the 2015 IECC requirements, DOE is proposing to adopt the 2015 IECC *U*-factor requirements for skylights into the proposed rule. This proposal is consistent with the recommendation of the MH working group. *See* Term Sheet at 3.

For door *U*-factor requirements, DOE found that a manufactured home with a *U*-factor of 0.40 was cost-effective. Therefore, DOE proposes a prescriptive door *U*-factor requirement of 0.40 in all climate zones for the proposed rule.

This proposal is consistent with the recommendation of the MH working group. *See* Term Sheet at 3.

Section 460.102(b)(2) as proposed would require the truss heel height to be a minimum of 5.5 inches at the outside face of each exterior wall for the purpose of compliance with the prescriptive ceiling insulation *R*-value requirement established under § 460.102(b)(1). This minimum heel height requirement would ensure that a minimum space is available in the eaves of the ceiling, allowing for adequate insulation coverage near the eaves. This proposal is also consistent with the recommendation of the MH working group. *See* Term Sheet at 3.

Section 460.102(b)(3) would authorize manufacturers to install ceiling insulation with either a uniform thickness or a uniform density. In many cases, a ceiling may need to be filled with loose blown insulation to a greater height at the center of the ceiling relative to the edges near the eaves to meet average overall *R*-value requirements. Although uniform insulation thickness is not required under the proposed standard, the 5.5-inch minimum truss heel height encourages a minimum insulation thickness at the eaves. This proposal is also consistent with the recommendations of the MH working group. *See* Term Sheet at 3.

Section 460.102(b)(4) would authorize manufacturers to use a combination of *R*-21 batt insulation and *R*-14 blanket insulation in lieu of *R*-30 insulation for the purpose of compliance with the climate zone 4 floor insulation *R*-value requirement under paragraph (b)(1) of this section. This requirement would reflect industry practice in which manufactured homes often do not have space in the floor to accommodate *R*-30 insulation without compression. DOE thus proposes that *R*-21 batt insulation plus *R*-14 blanket insulation would be deemed compliant with the *R*-30 requirement in order to provide a prescriptive alternative for space-constrained floors. This proposal is also consistent with the recommendation of the MH working group. *See* Term Sheet at 3.

Section 460.102(b)(5) would authorize manufacturers to exclude from the SHGC requirements under § 460.102(a) any individual skylight with an SHGC that is less than or equal to 0.30. This requirement effectively would establish an exception for skylights to the SHGC requirements in climate zone 1, setting forth a maximum skylight SHGC requirement of 0.30. This exception is set forth in the 2015 IECC in footnote "b" to Table R402.1.2. The MH working group recommended that DOE retain this requirement, and DOE agrees with including this exception in the proposed rule. *See* Term Sheet at 3.

DOE also considered the potential impact of adopting sections R402.3.3 and R402.3.4 of the 2015 IECC in this rulemaking. Section R402.3.3 specifies that 15 square feet of glazed fenestration may be exempt from SHGC and *U*-factor requirements. DOE proposes not to adopt this requirement because the prescriptive fenestration SHGC and *U*-factor requirements would apply to all fenestration. Given that 15 square feet represents a large portion of the overall fenestration area that comprises a manufactured home, adoption of this requirement potentially would exclude from these requirements a significant source of energy conservation. Section R402.3.4 of the 2015 IECC exempts one side-hinged opaque door of up to 24 square feet in surface area from the 2015 IECC *U*-factor requirements. DOE has not adopted section R402.3.4 of the 2015 IECC, as excluding these types of doors from this proposed rulemaking also would represent the loss of a significant source of home energy conservation.

Section R402.5 of the 2015 IECC specifies maximum *U*-factor requirements for sunroom fenestration. Because sunrooms are not commonly offered in manufactured housing, DOE determined this section was not applicable to manufactured housing and proposes not to include sunroom fenestration requirements in this proposed rule.

Section 460.102(b)(6) would establish maximum *U*-factor values as alternatives to the minimum *R*-value requirements established under § 460.102(a). *See* Term Sheet at 5. DOE determined each proposed *U*-factor alternative by calculating the *U*-factor corresponding to a building component (*e.g.*, wall) with typical dimensions and construction using the insulation material *R*-value specified in Table III.1. More detail on establishing the proposed *U*-factor alternatives is provided in chapter 7 of the TSD. DOE notes that the proposed *U*-factor alternatives are based on a representative single-section manufactured home, which are an average of 4.2 percent higher than the corresponding calculations of *U*-factor alternatives using the dimensions of a representative multi-section manufactured home.

DOE requests comment on the *U*-factor alternatives and their equivalency with the *R*-value requirements for ceiling, wall, and floor insulation. Specifically, DOE invites comment on the use of *U*-factor alternatives for ceiling insulation based on a conversion calculation using a representative single-section manufactured home.

Section 460.102(b)(7) would establish a maximum ratio of 12 percent for glazed fenestration area to floor area. As discussed in further detail in chapter 7 of the TSD, DOE used this ratio as a typical housing characteristic in its analyses for determining the prescriptive requirements. Manufactured homes with window to floor area greater than 12 percent would use more energy (all else held equal), because glazed fenestration generally has a greater *U*-factor than other building components (such as walls). Although this requirement limits the amount of glazed fenestration in a manufactured home when a manufacturer is using the prescriptive requirements for compliance with the proposed rule, a manufacturer may instead follow the performance-based requirements for compliance if they wish to increase the area of glazed fenestration (in exchange for increasing the performance of other building thermal envelope components).

The proposed performance-based requirements under § 460.102(c) are stated in terms of maximum U_o of the entire building thermal envelope as a function of climate zone. The U_o requirements proposed in § 460.102(c) were determined by applying the proposed prescriptive building thermal envelope requirements under § 460.102(b) to manufactured homes using typical dimensions and construction techniques and then calculating the resultant U_o. See chapter 7 of the TSD for more detailed information on the typical dimensions of manufactured homes and the Battelle Method for more detailed information on the calculation of U_o.

As discussed in chapter 7 of the TSD, the proposed maximum U_o for a multi-section manufactured home was calculated by assuming a 1,568-square-foot double-section manufactured home. The proposed maximum U_o for a single-section manufactured home was calculated by assuming a 924-square-foot single-section manufactured home. Both multi- and single-section home U_o values were calculated assuming manufactured homes built with wood framing and a window area equal to 12 percent of the floor area. DOE's proposed approach to determining U_o is consistent with HUD's approach to determining U_o under the HUD Code (*see* 24 CFR 3280.507(a)), and is very similar to the ICC's approach to determining total *UA* under section R402.1.5 of the 2015 IECC. DOE believes that its approach to determining U_o would reduce the compliance burden on manufacturers by avoiding the need for manufacturers to perform two separate calculations under both the HUD Code and the DOE requirements.

Section R402.5 of the 2015 IECC includes specifications for maximum allowable fenestration *U*-factors when following the performance-based approach. The 2015 IECC specifies a maximum area-weighted average *U*-factor of 0.48 in IECC climate zones 4 and 5 for vertical fenestration, a maximum area-weighted average *U*-factor of 0.40 for IECC climate zones 6 through 8 for vertical fenestration, and a maximum area-weighted average *U*-factor of 0.75 for skylights in IECC climate zones 4 through 8. Consistent with the recommendations of the MH working group (*see* Term Sheet at 1), DOE proposes to adopt these requirements under §§ 460.102(c)(2) and 460.102(c)(3) by limiting area-weighted vertical fenestration *U*-factor to 0.48 in climate zone 3, limiting area-weighted vertical fenestration *U*-factor to 0.40 in climate zone 4, and limiting area-weighted skylight *U*-factor to 0.75 in climate zones 3 and 4. Sections 460.102(c)(2) and 460.102(c)(3) would serve the purpose of limiting the extent to which window performance can be traded off for improved performance in other components of a manufactured home and would prevent areas of a manufactured home that are located in close proximity to vertical fenestration and skylights from being subject to excessive rates of heat loss.

Finally, § 460.102(c)(4) would require windows, skylights, and doors containing more than 50 percent glazing by area to satisfy the SHGC requirements under § 460.102(a) on the basis of an area-weighted average and seeks to ensure flexibility among manufacturers that choose to use unique glazed fenestration products that otherwise would not meet the SHGC requirement individually. This proposal is also consistent with the recommendations of the MH working group. *See* Term Sheet at 4.

DOE invites comment on proposal to include an area-weighted average calculation of SHGC for compliance with § 460.102(c). DOE also requests comment on all other prescriptive and performance requirements proposed in this section. To the extent that a commenter supports the proposed requirements or suggests alternative building thermal envelope criteria, DOE is specifically interested in data and calculations that would support the commenter's position.

Section 460.102(d) would establish procedures for ensuring compliance with the prescriptive building thermal envelope standards under § 460.102(b). As discussed in this preamble, however, the MH working group did not address options for systems of compliance and enforcement, and DOE has not included proposed compliance and enforcement provisions in rule. In the event that DOE addresses compliance assurance in a future rulemaking, paragraphs (d)(1), (d)(2), (d)(4), (d)(5), and (d)(7) would be reserved to provide a methodology for calculating the *R*-value of insulation; the *R*-value of non-insulating materials; fenestration *U*-factor; the *U*-factor of walls, ceilings, and floors; and glazed fenestration SHGC that would provide for an accurate and repeatable procedure to determine compliance with the standards proposed under § 460.102(b).

Section 460.102(d)(3) would establish that the total *R*-value of a component is the sum of the *R*-values of each layer of insulation that compose the component. This proposed requirement is consistent with section R402.1.3 of the 2015 IECC, which specifies that component insulation materials installed in layers has a total *R*-value equal to the sum of the *R*-values of each layer.

Sections 460.102(d)(6) and 460.102(d)(8) would authorize manufacturers to determine *U*-factor or SHGC for certain fenestration products and doors in accordance with the prescriptive default values set forth in Tables 460.102–4, 460.102–5, and 460.102–6. DOE anticipates that a manufacturer could rely on these prescriptive default *U*-factor values to facilitate the ease of compliance with this proposed rule. DOE has designed proposed § 460.102(d)(6) for consistency with Tables R303.1.3(1), R303.1.3(2), and R303.1.3(3) of the 2015 IECC and in accordance with the MH working group's recommendations. DOE has proposed conservative prescriptive default values to provide an incentive to manufacturers to determine the actual performance value of the windows, doors, or skylights installed in a manufactured home. DOE expects the default tables would be used primarily in instances in which the actual performance value of a window, door, or skylight is unavailable or unknown.

Section 460.102(e) would establish procedures for ensuring compliance with the building thermal envelope U_o standards under § 460.102(c). As discussed in this preamble, the MH working group did not address options for systems of compliance and enforcement, and DOE has not included proposed compliance and enforcement provisions in this proposed rule. In the event that DOE addresses compliance assurance in a future rulemaking, paragraphs (e)(1)(i), (e)(1)(ii), and (e)(2) would be reserved to provide a methodology for calculating the *R*-value of insulation, the *R*-value of non-insulating materials, and glazed fenestration SHGC that would provide for an accurate and repeatable procedure to determine compliance with the standards proposed under § 460.102(c).

The MH working group recommended, however, that U_o be determined in accordance with the "Battelle Method." The Battelle Method is an industry standard methodology for determining U_o and is commonly utilized in the manufactured home industry. The Battelle Method's methodology is based on recommendations in the ASHRAE Handbook of Fundamentals but provides more specificity to determining U_o for manufactured housing. The Battelle Method provides a step-by-step process for calculating U_o by calculating the *U*-value of each unique area of the building thermal envelope and by calculating a weighted average. Both of these references serve as the basis for calculating overall thermal transmittance under the HUD Code (*see* 24 CFR 3280.508) while only the ASHRAE Handbook of Fundamentals is referenced in section R402.1.5 of the 2015 IECC.

Finally, § 460.102(e)(3) would authorize manufacturers to determine the SHGC of certain glazed fenestration products in accordance with the prescriptive default values set forth in Table 460.102–6 for consistency with the rationale accompanying § 460.102(d)(8) of this section. Table 460.102–6 differentiates between single- and double-pane windows, glazed block windows, as well as clear and tinted glass. Single- and double-pane windows refer to the number of panes of glass that are in the window assembly. A single-pane window consists of one pane of glass while a double-pane window consists of two panes of glass separated within the window assembly at a fixed distance. The space between the two panes of glass serves to reduce heat transfer through the window. A glazed block window refers to a window assembly that consists of glass blocks that are arranged or laid out like bricks. These types of windows cannot be opened and are typically used in ground level or basement floors for security purposes. The terms "clear" and "tinted" glass characterize the light transmission properties of the glass. Clear glass is uncoated and transparent, admitting all light through its body. Tinted glass instead has an altered chemical composition or surface coating that affects light transmission and color. Different types of tinted glass block and reflect different quantities and types of light. Table 460.102–6 provides proposed default SHGC values for these different types of windows.

(c) § 460.103 Installation of Insulation

Section 460.103(a) would require manufacturers to install insulation according to both the insulation manufacturer's installation instructions and the instructions set forth in Table 460.103. DOE proposes to require manufacturers to comply with the insulation manufacturer's installation instructions both for consistency with section R303.2 of the 2015 IECC and to ensure that the intended performance of the insulation is achieved. Unlike section R303.2 of the 2015 IECC, however, § 460.103 would not require insulation to be installed in accordance with the International Building Code or the International Residential Code, as the HUD Code already sets forth requirements in this regard. DOE also proposes additional insulation requirements under § 460.103(a) that are based in part on section R402.4.1.1 of the 2015 IECC, with clarifications to account for the unique design of manufactured homes, to ensure that insulation is able to achieve its intended thermal performance.

Table 460.103 would include a general requirement that air-permeable insulation must not be used as a material to establish the air barrier. This proposed requirement is consistent with Table R402.4.1.1 of the 2015 IECC, which the MH working group recommended that DOE include this in the proposed rule. *See* Term Sheet at 1. DOE proposes to adopt this requirement to improve energy conservation in manufactured housing through the reduction of natural air infiltration through the building thermal envelope.

Proposed Table 460.103 also includes insulation requirements for access hatches, panels, and doors between conditioned space and unconditioned space. Section 460.103(a) would require each access hatch, panel, and door leading from conditioned space to unconditioned space to be insulated to a level equivalent to the level of insulation immediately adjacent to the access hatch, panel, and door. This requirement would ensure that the thermal performance of the access hatch, panel, or door would be identical to the surrounding ceiling and would ensure that the ceiling insulation achieves the same level of performance as ceiling insulation without an access hatch, panel, or door. Section 460.103(a) also would require each access hatch, panel, and door to provide access to all equipment without damaging or compressing the insulation. Damaging or compressing the insulation would reduce the performance of the insulation and increase the energy losses associated with the ceiling. Finally, each access hatch, panel, and door must be equipped with a wood-framed or equivalent baffle or retainer when loose fill insulation is installed within a ceiling assembly to retain the insulation on the access hatch, panel, or door. That is, an access hatch, panel, or door must use baffles or a retainer to prevent loose-fill insulation installed within a ceiling assembly from spilling into the living space upon use of the access hatch, panel, or door. Each of these requirements have been adopted from section R402.2.4 of the 2015 IECC are consistent with the recommendations of the MH working group, and seek to preserve the performance of insulation within a manufactured home. *See* Term Sheet at 1.

Section R402.2.4 of the 2015 IECC also includes a specification for vertical doors that provide access from conditioned to unconditioned spaces to meet certain fenestration insulation requirements. The MH working group recommended not adopting this specification in the proposed rule because vertical doors that separate conditioned and unconditioned spaces typically are not installed in manufactured homes. Consistent with the recommendation of the MH working group, DOE proposes not to include this requirement in this proposed rule. *See* Term Sheet at 1.

Proposed Table 460.103 includes requirements for installing insulation adjacent to baffles. Baffles must be constructed using a solid material, maintain an opening equal or greater than the size of the eave vent, and extend over the top of the attic insulation. Baffles allow for air circulation from the exterior of the manufactured home to the attic space between the ceiling insulation and the top of the roof. The installation requirement would ensure proper attic ventilation and that insulation would not interfere with a baffle's ability to facilitate air circulation. The proposed requirements would be consistent with section R402.2.3 of the 2015 IECC and the MH working group's recommendations, and would help ensure proper ventilation in attic spaces. *See* Term Sheet at 1.

Table 460.103 as proposed includes a requirement for installing insulation in ceilings or attics. Specifically, the requirement states that insulation installed in any dropped ceiling or dropped soffit must be aligned with the air barrier. The requirement would ensure that there would not be excessive air infiltration through the building thermal envelope if a dropped ceiling or dropped soffit is present in a manufactured home. This requirement is consistent with Table R402.4.1.1 in the 2015 IECC, and the MH working group recommended that DOE include this requirement in the proposed rule. *See* Term Sheet at 1.

To address the unique practice of HVAC duct installation in manufactured homes, Table 460.103 would require insulation to be installed to maintain permanent contact with the underside of the rough floor decking over which the finished floor, flooring material, or carpet is laid, except where air ducts directly contact the underside of the rough floor decking. This requirement is generally consistent with section R402.2.8 of the 2015 IECC, which specifies that floor insulation be installed in direct contact with the underside of the subfloor decking. Given that HVAC ducts in manufactured homes generally are located in the floor space between the insulation and the underside of the subfloor decking, DOE would require the same floor insulation requirements as the 2015 IECC while recognizing the need to insulate around HVAC ducts. DOE requests comment on the proposed floor insulation requirement and whether it would be consistent with industry practice.

Table 460.103 as proposed includes an insulation installation requirement associated with narrow cavities such that batts installed in narrow cavities must be cut to fit or filled by insulation that upon installation readily conforms to the available cavity space. This requirement would ensure that all wall cavities are properly insulated, even if they have a non-standard width. This type of narrow cavity could occur in a wall area adjacent to a window frame. This requirement would be consistent with Table R402.4.1.1 of the 2015 IECC, which the MH working group recommended that DOE adopt in the proposed rule. *See* Term Sheet at 1. DOE proposes to include this requirement in the proposed rule because it ensures that all cavities are properly insulated to achieve the expected thermal performance.

Table 460.103 also would require rim joists to be insulated. This requirement would ensure that the entire floor assembly of a manufactured home achieves the desired thermal performance. The requirement is consistent with Table R402.4.1.1 of the 2015 IECC, and the MH working group recommended that DOE include this requirement in the proposed rule. *See* Term Sheet at 1.

Table 460.103 includes an insulation installation requirement that would require exterior walls adjacent to showers and tubs to be insulated. This proposed requirement is consistent with Table R402.4.1.1 of the 2015 IECC, which the MH working group recommended that DOE adopt in the proposed rule. *See* Term Sheet at 1. DOE proposes to include this requirement in the proposed rule because it would ensure that all wall assemblies with showers and tubs would achieve the expected thermal performance requirements established under § 460.102.

Table 460.103 also would require air permeable exterior building thermal envelope insulation for framed walls to completely fill the wall cavity, including cavities within stud bays caused by blocking lay flats or headers. The requirement clarifies the 2015 IECC requirement for wall insulation installation found in Table R402.4.1.1. The MH working group recommended that DOE modify the language of the 2015 IECC requirement to account for the unique design of manufactured housing. *See* 9/23 Working Group Transcript, EERE–2009–BT–BC–0021–0122 at p. 315. DOE proposes to adopt this requirement, along with the recommended modifications from the MH working group, to ensure that wall assemblies in manufactured homes achieve the proposed thermal performance requirements set forth under § 460.102.

Finally, the 2015 IECC contemplates additional specifications for insulating areas associated with the building thermal envelope that DOE has not included in this proposed rule. For example, section R402.1.1 of the 2015 IECC specifies that wall assemblies in the building thermal envelope comply with the vapor retarder requirements of section R702.7 of the International Residential Code or section 1405.3 of the International Building Code. DOE has not incorporated this requirement into this proposed rule, as this specification is a construction requirement that was not addressed by the MH working group.

Section R402.2.13 of the 2015 IECC establishes sunroom insulation specifications. Sunrooms typically are not commonly installed in manufactured homes; accordingly, DOE has not incorporated this provision of the 2015 IECC into this proposed rule. Similarly, section R402.2.12 of the 2015 IECC specifies that insulation is not required on the horizontal portion of the foundation that supports a masonry veneer. Given that masonry veneers typically are not used in manufactured homes, DOE has not incorporated this provision of the 2015 IECC into this proposed rule

The 2015 IECC also includes building thermal envelope specifications for mass walls, steel-framed buildings, walls with partial structural sheathing, basement and below-grade walls, slab-on grade construction, and crawl space walls in sections R402.2.5, R402.2.6, R402.2.7, R402.2.9, R402.2.10, R402.2.11, respectively. DOE has not included these requirements in the proposed rule because they are not directly relevant to manufactured housing.

(d) § 460.104 Building Thermal Envelope Air Leakage

Section 460.104 would require manufacturers to seal manufactured homes against air leakage in order to ensure the conservation of energy within a manufactured home. Section 460.104 would establish both general and specific requirements for sealing a manufactured home to prevent air leakage, all of which are based on Table 402.4.1.1 of the 2015 IECC and related recommendations from the MH working group. *See* Term Sheet at 5. Unlike the 2015 IECC, the proposed rule would not establish maximum building thermal envelope air leakage rate requirements. The MH working group recommended sealing requirements that would ensure that a home can be tightly sealed with techniques that can be visually inspected, thus minimizing the compliance burden on manufacturers. The MH working group also recommended the adoption of air leakage sealing requirements designed to achieve an overall air exchange rate of 5 ACH within a manufactured home. *See* Term Sheet at 5.

The general requirements in § 460.104 require that manufacturers properly seal all joints, seams, and penetrations in the building thermal envelope to establish a continuous air barrier and use appropriate sealing materials to allow for differential expansion and contraction of dissimilar materials. These requirements would ensure that there would not be excessive air infiltration through the building thermal envelope and that air seals would be durable through seasonal changes in temperature. Because these requirements would result in reduced energy use through proper air sealing in a manufactured home, DOE proposes to adopt the MH working group's recommendations in the proposed rule. DOE requests comment on the effectiveness of the proposed prescriptive criteria of § 460.104 for the purpose of sealing the building thermal envelope to limit air leakage.

Table 460.104 also would include requirements for establishing an air barrier for specific building components. The proposed requirements included in Table 460.104 for ceilings or attics, duct system register boots, recessed lighting, and windows, skylights, and exterior doors are all consistent with Table R402.4.1.1 of the 2015 IECC. The MH working group recommended that these 2015 IECC-based requirements also be included in the proposed rule. *See* Term Sheet at 1. Because these specifications reduce energy use by helping to ensure proper installation of an air barrier for the applicable building components, DOE proposes to adopt the 2015 IECC specifications as requirements in the proposed rule.

The requirements of Table 460.104 for walls, floors, and electrical boxes or phone boxes on exterior walls are based on specifications included in Table R402.4.1.1 of the 2015 IECC with modifications based on the recommendation of the MH working group. *See* Term Sheet at 1. The 2015 IECC specifications save energy by helping to ensure proper installation of an air barrier, and the MH working group recommended modifications to the specifications based on the unique nature of the manufactured housing industry. Rather than use the term "air sealed boxes" from the 2015 IECC, the MH working group described directly how this could be achieved using the phrasing "the air barrier must be sealed around the box penetration." DOE thus proposes to adopt the 2015 IECC specifications, as amended, in the proposed rule.

Table 460.104 also would establish requirements for mating line surfaces, as recommended by the MH working group. *See* Term Sheet at 5. The proposed requirements would ensure proper sealing of the mating line surface between the two sections of a multi-section manufactured home and would reduce energy use by ensuring that multi-section manufactured homes have a continuous air barrier.

The proposed requirements of Table 460.104 for rim joists, and showers or tubs adjacent to exterior walls are consistent with the specifications of Table R402.4.1.1 of the 2015 IECC. The MH working group recommended that DOE adopt the 2015 IECC specifications in the proposed rule given that they would result in additional energy conservation within a manufactured home by helping to ensure a continuous air barrier. *See* Term Sheet at 1.

Table R402.4.1.1 of the 2015 IECC also contains specifications for air leakage sealing in crawl space walls, garage separation, plumbing and wiring, and concealed sprinklers. The MH working group recommended that DOE not propose these specifications in the proposed rule. *See* Term Sheet at 1. Given that these requirements are not directly applicable to manufactured home construction, DOE is not proposing to include these requirements in the proposed rule.

The 2015 IECC includes specifications for air leakage of fenestration and recessed luminaires that DOE has not included in this proposed rule. In section R402.4.3 of the 2015 IECC, windows, skylights, and sliding glass doors have a specified maximum air leakage rate of 0.3 cubic feet per minute (cfm) and swinging doors have a specified maximum air leakage rate of 0.5 cfm. Section R402.4.5 of the 2015 IECC specifies air leakage around recessed luminaires most be no greater than 2.0 cfm when tested at a 75 pascal pressure differential. The MH working group recommended not to include these requirements for fenestration and recessed luminaire air leakage in order to reduce the testing burden on manufacturers. *See* Term Sheet at 1. DOE agrees with the MH working group's recommendation and has not proposed to include air leakage requirements for fenestration and recessed luminaires, as air leakage standards already are addressed generally at the building thermal envelope level. Nevertheless, DOE has designed its proposed prescriptive building thermal envelope air leakage standards, which include requirements to seal the space between fenestration and framing and between recessed luminaires and drywall, to achieve an air leakage rate of five ACH.

DOE also reviewed section R402.4.4 of the 2015 IECC regarding rooms containing fuel-burning appliances. Section R402.4.4 includes specifications for the placement of fuel-burning appliances (outside of conditioned space), for sealing of the room enclosing the appliance, and for insulation of ducts and waterlines. Although these provisions have potential to save energy, the HUD Code already specifies that the combustion system for fuel burning devices must be completely separated from the interior atmosphere of the manufactured home. *See* 24 CFR 3280.709(d). Therefore, DOE is not including these requirements in this proposed rulemaking. However, DOE may consider the merits of including R402.4.4 in future revisions of energy conservation standards for manufactured housing. DOE requests comment on the fireplace requirements based on section R402.4.2 of the 2015 IECC and the proposal not to include insulation and air sealing requirements pertaining to rooms containing fuel-burning appliances.

3. Subpart C: HVAC, Service Water Heating, and Equipment Sizing

(a) § 460.201 Duct Sealing

Section 460.201(a) would require manufacturers to equip each manufactured home with a duct system designed to limit total air leakage to less than or equal to four cubic feet per minute per 100 square feet of conditioned floor area, when tested in accordance with § 460.201(b). Section R403.3.4 of the 2015 IECC specifies that the total air leakage of duct systems is to be less than or equal to four cubic feet per minute per 100 square feet of conditioned floor area under a post-construction test. The 2015 IECC also includes specifications for a rough-in test performed with or without an air handler. The MH working group recommended that DOE consider only the post-construction test 2015 IECC specifications in developing the proposed standards given the unique nature of manufactured homes relative to site-built housing. *See* 9/10 Working Group Transcript, EERE–2009–BT–BC–0021–0133 at 227. DOE proposes to adopt the post-construction test specifications of the 2015 IECC as it would be more cost-effective to the manufactured housing industry.

Section R403.3.5 of the 2015 IECC specifies that building framing cavities must not be used as plenums. A plenum is a space within a building that facilitates the circulation of air. Building framing cavities are typically not tightly sealed and do not provide an adequate barrier to foreign bodies for air quality reasons. The use of building framing cavities as ducts and plenums is generally considered to be poor practice and is not a typical practice in the manufactured housing industry. Therefore, consistent with the 2015 IECC and the recommendation of the MH working group (*see* Term Sheet at p. 1), DOE proposes to require that building framing cavities not be used as ducts or plenums under § 460.201(a).

Section 460.201(b) would establish procedures for ensuring compliance with the duct system air leakage standard under § 460.201(a). As discussed in this preamble, the MH working group did not address options for systems of compliance and enforcement, and DOE has not included proposed compliance and enforcement provisions in this rule. In the event that DOE addresses compliance assurance in a future rulemaking, paragraph (b) would be reserved to provide a methodology for determining compliance with this standard that would provide for an accurate and repeatable procedure.

The 2015 IECC also includes specifications associated with duct systems that DOE has not included in this proposed rule. Section R403.3.1 of the 2015 IECC specifies that supply ducts in attics shall be insulated to a minimum of *R*-8 while all other ducts shall be insulated to a minimum of *R*-6. The MH working group did not discuss this section of the 2015 IECC. Because ducts are typically located within the building thermal envelope in manufactured homes, DOE did not include this IECC requirement. DOE requests comment on this proposal.

DOE also would not incorporate sections R403.3.2 and R403.3.2.1 of the 2015 IECC, which specify that sealing of ducts, air handlers, and filter boxes must be in accordance with the International Mechanical Code or the International Residential Code. DOE believes that additional sealing requirements are not needed in conjunction with the proposed quantitative sealing requirements in § 460.201(a). DOE recognizes, however, that some manufacturers may choose to meet the requirements of § 460.201(a) in part by voluntarily following the requirements of the International Mechanical Code or the International Residential Code.

(b) § 460.202 Thermostats and Controls

Section R403.1 of the 2015 IECC specifies that at least one thermostat shall be provided for each separate heating and cooling system. Section R403.1.1 of the 2015 IECC also specifies that the thermostat controlling the primary heating or cooling system must be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day. The 2015 IECC further specifies that where the primary heating system is a forced-air furnace, at least one thermostat per dwelling unit must be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day. The 2015 IECC also specifies that this thermostat to have the capability of setting back, or temporarily operating, the system to maintain zone temperatures as low as 55 °F or as high as 85 °F.

DOE has adopted section R403.1 of the 2015 IECC into § 460.202(a) without revision. DOE also has incorporated section R403.1.1 of the 2015 IECC into § 460.202(b). As proposed, § 460.202 would apply to any thermostat and controls installed by the manufacturer. A thermostat is a necessary interface for establishing desired temperature levels within a home, and already standard practice currently. Programmable thermostats help consumers save energy by providing the capability reduce energy use automatically during predetermined times (generally times the home is not occupied). This is also consistent with recommendations of the MH working group. *See* Term Sheet at 1.

Moreover, section R403.1.2 of the 2015 IECC specifies that heat pumps having supplementary electric-resistance heat to have controls that, except during defrost, prevent supplemental heat operation when the heat pump compressor can meet the heating load. Supplementary electric-resistance heating equipment is less efficient and less cost-effective as a heating method than heat-pump heating equipment. Therefore, preventing supplementary electric-resistance heating except for during defrost would reduce energy usage and manufactured home energy bills. DOE notes that § 3280.714(a)(1)(ii) of the HUD Code establishes requirements for heat pumps. DOE is not aware of any instances in which the proposed requirement, which provides that the heating system be provided with controls that, except during defrost, prevent supplemental heat operation when the heat pump compressor can meet the heating load, would conflict with § 3280.714(a)(1)(ii). DOE thus proposes to include this requirement in this rule, as recommended by the MH working group. *See* Term Sheet at 1.

DOE requests comment on the proposed requirements contained in § 460.202. Specifically, DOE requests comment and information on the potential interaction between proposed § 460.202(c) and § 3280.714(a)(1)(ii) of the HUD Code.

(c) § 460.203 Service Hot Water Systems

Section 460.203(a) would require manufacturers to install service water heating systems according to the service water heating system manufacturer's installation instructions. As proposed, § 460.203 would apply to any service water heating system installed by a manufacturer. In addition, § 460.203 would require manufacturers to provide maintenance instructions for the service water heating system with the manufactured home. These requirements would promote the correct installation and maintenance of service water heating equipment and help to ensure that such equipment performs at its intended level of efficiency.

Section 403.5.1 of the 2015 IECC specifies that automatic controls, temperature sensors, and pumps related to service water heating must be accessible and that manual controls be "readily accessible." § 460.203(b) would require any automatic and manual controls, temperature sensors, pumps associated with service water heating systems to be similarly accessible. This requirement would ensure that manufactured homeowners would have adequate control over service water heating equipment in order to achieve the intended level of efficiency contemplated under part 460. This is also consistent with the recommendation of the MH working group. *See* Term Sheet at 1.

Section 403.5.1.1 of the 2015 IECC specifies that (1) heated water circulation systems be provided with a circulation pump, and the system return pipe be a dedicated return pipe or cold water supply pipe; (2) gravity and thermosyphon circulation systems are prohibited; (3) controls for circulating hot water system pumps must start the pump based on the identification of a demand for hot water within the occupancy; and (4) the controls must automatically turn off the pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water. Heated water circulation systems must have a circulation pump (if they are not of the gravity or thermosyphon variety) to function properly. Moreover, gravity or thermosyphon circulation systems are less efficient than those that use a pump. Manufactured homeowners would benefit from the energy savings associated with controls used to operate the circulation pump based on demand from a user and that automatically turn off the pump when there is no demand for hot water. Finally, controls that automatically turn off the pump once the desired temperature is reached reduce energy use relative to a system that runs the pump continuously. Accordingly, DOE has incorporated each of these specifications into proposed § 460.203(c) without change to ensure heated water circulation systems are designed in an energy efficient manner.

Section R403.5.2 of the 2015 IECC includes specifications that are related to demand recirculation systems. Conventional hot water systems send cold water (hot water that has cooled) standing in the hot water pipe down the drain when hot water is demanded by the home owner. After the cold water is flushed out, hot water from the water heater reaches the point of use. Demand recirculation systems differ from conventional hot water systems in that any cold water standing in hot water pipes at the time hot water is demanded is sent back to the hot water system rather than being dumped down the drain. Given that these systems, while technically feasible to install in manufactured housing, are not currently in use by the industry, DOE proposes not to include any requirements relating to demand recirculation systems in this proposed rule; however, DOE requests comment on the potential benefits and burdens of including demand recirculation system standards for consideration in development of a final rule.

Section R403.5.4 of the 2015 IECC specifies standards and test procedures for drain water heat recovery units. Given that these devices typically are not used in manufactured homes, DOE proposes not to include any requirements related to drain water heat recovery units in this proposed rule; however, DOE requests comment on the potential benefits and burdens of drain water heat recovery unit procedures for consideration in development of a final rule.

DOE proposes that all hot water pipes outside conditioned space would be required to be insulated to at least *R*-3, and that all hot water pipes from a water heater to a distribution manifold would be required to be insulated to at least *R*-3. Section R403.5.3 of the 2015 IECC specifies seven categories of hot water pipe (such as piping outside the conditioned space) that must be insulated to at least *R*-3. Section 460.203(e) has incorporated each of the categories of piping listed under section R403.5.3 of the 2015 IECC that are relevant to manufactured housing. Accordingly, DOE has not adopted specifications related to piping under a floor slab, buried-in piping, and supply and return piping in recirculation system other than demand recirculation systems. Any piping located within conditioned space is unlikely to affect energy use dramatically, as hot water eventually will reach room temperature regardless of whether *R*-3 insulation is in place. Hot water piping outside of conditioned space is exposed to a larger temperature gradient and therefore piping insulation would have a greater opportunity for energy conservation within a manufactured home. This is also consistent with the recommendations of the MH working group. *See* Term Sheet at 6.

(d) § 460.204 Mechanical Ventilation Fan Efficacy

Table 403.6.1 of the 2015 IECC includes requirements for mechanical ventilation system fan efficacy. Consistent with the recommendations of the MH working group, and because DOE considers that there would be significant potential energy savings benefits associated with fan efficacy, DOE proposes to incorporate these specifications, without change, into Table 460.204. *See* Term Sheet at 1.

Section 403.6.1 of the 2015 IECC specifies that if mechanical ventilation fans are integral to tested and listed HVAC equipment, then they must be powered with an electronically commutated motor. The MH working group (*see* Term Sheet at 1) recommended that DOE include this requirement in the proposed rule without change. Since electronically commutated motors offer substantially increased energy conservation over conventional induction motors, DOE proposes to include this requirement in the proposed rule.

Section 3280.103(b) of the HUD Code establishes whole-house ventilation requirements, including that a manufactured home must be capable of providing 0.035 cubic feet (air volume) per minute per square foot (floor area) of mechanical ventilation. Section 3280.103(b) also requires that the flow rate of the system must be between 50 and 90 cubic feet per minute. In contrast, § 460.204 would establish requirements for the electrical efficiency of the fans providing the ventilation. These regulations would not conflict, as HUD regulates the "size" of the ventilation system while DOE would regulate the efficiency of the fans that provide ventilation.

(e) § 460.205 Equipment Sizing

Section R403.7 of the 2015 IECC sets forth specifications on the appropriate sizing of heating and cooling equipment within a manufactured home, which the MH working group recommended for inclusion in the proposed rule. *See* Term Sheet at 1. This section of the 2015 IECC requires the use of ACCA Manual S to select appropriately sized heating and cooling equipment based on building loads calculated using ACCA Manual J. The 2015 IECC also includes the option to use "other approved" calculation methodologies and requires that new or replacement heating and cooling equipment meet minimum energy efficiency requirements as required by federal law. Section 460.205 would set forth specific requirements for the utilization of ACCA Manuals S and Manual J for the purposes of selecting equipment size and calculating building load. The ACCA manuals are industry standards that DOE has determined are adequate for these calculations. DOE has not approved any other calculation methodologies because no other applicable, widely-used methodologies are currently available. DOE requests comment on the applicability of ACCA Manual S and ACCA Manual J for the purposes of heating and cooling equipment sizing.

Section R403.7 of the 2015 IECC also specifies that any replacement heating or cooling equipment be compliant with federal law. DOE would not adopt section R403.7 as there would be no need to remind manufacturers of the requirement to comply with existing federal law.

C. Other 2015 IECC Specifications

The following section discusses certain specifications included in the 2015 IECC that DOE has not included in the development of its proposed energy conservation standards. DOE requests comment with regard to each of these specifications, including whether DOE should incorporate any of the specifications in development of a final rule.

1. Section R302

Section R302 of the 2015 IECC specifies interior design temperatures that are to be used for heating and cooling load calculations when using energy use modeling. Given that the proposed rule does not include an option for compliance with the building thermal envelope requirements that makes use of simulated performance (*see* section R405 of the 2105 IECC), DOE has not included this requirement in the proposed rule. DOE requests comment on the practicality and functionality of using a simulated performance alternative that contemplates the adoption of sections R302 and R405 of the 2015 IECC.

2. Section R303.1

Section R303.1 of the 2015 IECC specifies how materials, systems, and equipment are to be identified. DOE has not incorporated these specifications in the proposed rule as the underlying statutory authority provides no direction for DOE to impose requirements on component manufacturers.

3. Section R401.3

Section R401.3 of the 2015 IECC specifies that a permanent certificate be posted in a utility room that gives the performance values of major building components and systems. Provisions related to enforcement and compliance of the proposed DOE standards were not contemplated by the MH working group and therefore are not included in this proposed rule.

4. Section R402.4

Section R402.4.2 of the 2015 IECC specifies that wood-burning fireplaces shall have tight fitting doors and outdoor combustion air. The IECC also requires that the fireplace and tight fitting doors must be listed and labeled in accordance with certain referenced standards. DOE is proposing not to include these requirements in this rule because they were not specifically addressed by the MH working group.

Section R402.4.5 of the 2015 IECC also specifies that recessed luminaires must be IC-rated. DOE has not adopted section R402.4.5 as fire safety was not contemplated by the MH working group.

5. Section R403

Section R403.2 of the 2015 IECC includes specifications for hot water boiler outdoor temperature setback. Given that hot water boilers used to supply building heat are not used in manufactured homes, DOE has not adopted requirements based on section R403.2 of the 2015 IECC under this proposed rule.

Section R403.5.1.2 of the 2015 IECC includes specifications for electric heat trace systems. The IECC requires that these systems comply with certain referenced standards. DOE is proposing not to include this requirement because electric heat trace systems are not commonly used in manufactured housing.

Section R403.4 of the 2015 IECC specifies a minimum of *R*-3 insulation on mechanical system piping capable of carrying fluids above 105 °F or below 55 °F. Section R403.4.1 of the 2015 IECC specifies that mechanical system piping insulation exposed to weather must be protected to prevent insulation degradation. These specifications are intended to reduce heat loss or gain and improve the energy efficiency of the piping delivery system. Mechanical systems that require piping holding fluids in this temperature range are unusual for manufactured housing. *See* Cavco, EERE–2009–BT–BC–0021–0133 at p. 63. Furthermore, DOE expects that the manufacturer of the mechanical system would require piping insulation of at least *R*-3 for proper installation. For the aforementioned reasons, DOE is not proposing to include the requirements of section R403.4 and R403.4.1 of the 2015 IECC. DOE requests comment on this proposal.

Section R403.8 of the 2015 IECC includes specifications for systems serving as multiple dwelling units. Consistent with the recommendation of the MH working group (*see* Term Sheet at 1), and because a manufactured home typically functions only as a single dwelling unit, DOE has not adopted requirements related to section R403.8 of the 2015 IECC under this proposed rule.

Section R403.9 of the 2015 IECC includes specifications for pavement snow- and ice-melting controls. Consistent with the recommendation of the MH working group (*see* Term Sheet at 1), and because the factory assembly of manufactured homes does not contemplate driveway conditions, DOE has not adopted requirements related to section R403.9 of the 2015 IECC in this proposed rule.

Sections R403.10, R403.11, and R403.12 of the 2015 IECC include specifications associated with the energy consumption of pools, permanent spas, and portable spas. Consistent with the recommendation of the MH working group (*see* Term Sheet at 1), and because the factory assembly of manufactured homes does not include pools and spas, DOE has not adopted requirements related to these sections of the 2015 IECC in this proposed rule.

6. Section R404

Section R404.1 of the 2015 IECC specifies either that a minimum of 75 percent of the lamps within each permanently installed lighting fixture be high-efficacy lamps or that a minimum of 75 percent of the permanently installed lighting fixtures contain only high-efficacy lamps. The 2015 IECC defines high-efficacy lighting as (1) compact fluorescent lamps; (2) T8 or smaller diameter linear fluorescent lamps; or (3) lamps with a minimum efficacy of 60 lumens per watt for lamps greater than 40 watts, 50 lumens per watt for lamps greater than 15 watts and less than or equal to 40 watts, and 40 lumens per watt for lamps less than or equal to 15 watts. Consumer adoption of high-efficacy lighting has increased over the past decade, as evidenced by section 3.4.5 of the preliminary TSD associated with the DOE general service lamp energy conservation standard. *See* 79 FR 73503 (Dec. 11, 2014). This ongoing rulemaking for general service lamps studies the benefits and burdens of establishing nationwide minimum lamp efficacy standards. DOE also completed a final rule adopting revised lamp efficacy standards for general service fluorescent lamps on January 26, 2015. *See* 80 FR 4041. Given DOE's ongoing efforts in this regard, DOE has not adopted requirements related to lighting in the proposed rule and requests comment on whether DOE's other rulemaking efforts would be insufficient to achieve lighting efficiency in manufactured housing.

Section R404.1.1 of the 2015 IECC includes specifications for fuel gas lighting systems. Given that manufactured homes do not utilize fuel gas lighting systems, DOE has not adopted requirements related to section R404.1.1 of the 2015 IECC in this proposed rule.

7. Section R405

Section R405 of the 2015 IECC establishes criteria for compliance using a simulated energy performance analysis, which involves calculating expected building energy use and comparing that value to the energy use of a standard reference building that complies with the minimum specifications of the 2015 IECC. Although DOE believes that simulated performance is a valid and technically feasible option, such an option does not appear to offer additional flexibility in the design of a manufactured home relative to the performance-based approach for the building thermal envelope. Accordingly, DOE has not adopted requirements associated with alternative performance under the proposed rule. DOE requests comment on the practicality and functionality of using a simulated performance alternative that contemplates the adoption of sections R302 and R405 of the 2015 IECC.

8. Section R406

Section R406 of the 2015 IECC establishes criteria for compliance using an energy rating index (ERI) that contemplates the use of software to calculate the energy use of a building. Although DOE believes that ERI analysis is a valid and technically feasible option, such an option does not appear to offer additional flexibility in the design of a manufactured home relative to the performance-based approach for the building thermal envelope. Accordingly, DOE has not adopted requirements associated with alternative performance under the proposed rule. DOE requests comment on the practicality and functionality of adopting an ERI alternative that contemplates the adoption of section R406 of the 2015 IECC.

9. Chapter 5

Chapter 5 of the 2015 IECC includes specifications related to the alteration, repair, addition, and change of occupancy of existing buildings and structures. Given that the proposed rule contemplates the energy conservation of newly constructed manufactured homes, DOE has not adopted any of the specifications included in chapter 5 of the 2015 IECC.

10. Chapter 6

Chapter 6 of the 2015 IECC lists the industry standards referenced in the 2015 IECC. Section 460.3 incorporates by reference only the industry standards relevant to the proposals included in this proposed rule, with specific modifications as applicable to manufactured housing. Accordingly, DOE has not adopted the industry standards as referenced in chapter 6 of the 2015 IECC.

D. Crosswalk of Proposed Standards With the HUD Code

As discussed in this preamble, DOE's intention in proposing energy conservation standards for manufactured homes is that, if finalized, there would be no conflict between the proposed requirements and the construction and safety standards for manufactured homes as established by HUD. That is, compliance with the proposed requirements would not prohibit a manufacturer from complying with the HUD Code. Table III.2 lists the proposed energy conservation standards and discusses their relationship to similar requirements contained in the HUD Code. As this proposed approach requires careful analysis of all aspects of energy conservation contained in both the proposed rule and in the HUD Code, DOE requests comment on any inconsistencies that would result from this proposed approach.

TABLE III.2—CROSSWALK OF PROPOSED STANDARDS WITH THE HUD CODE

DOE Proposed rule (10 CFR part 460)	HUD Code (24 CFR part 3280)	Notes
§ 460.101 would establish four climate zones, which would be delineated by home size and both state and county boundaries.	§ 3280.506 establishes three climate zones delineated by state boundaries. The HUD Code establishes one standard for homes of all sizes within a climate zone.	HUD Code climate zone 3 and the northern portion of HUD Code climate zone 2 cover a similar region to climate zones 3 and 4 of the proposed rule. HUD Code climate zones 1 and the southern portion of HUD Code climate zone 2 cover a similar region to climate zones 1, 2, and 3 of the proposed rule.
§ 460.102(a) would establish building thermal envelope prescriptive and performance compliance options.	§ 3280.506 establishes a performance approach.	
§ 460.102(b) would set forth the prescriptive option for compliance with the building thermal envelope requirements.	§ 3280.506 establishes a performance approach only.	
§ 460.102(b)(2) would establish a minimum truss heel height.	No corresponding requirement.	
§ 460.102(b)(3) would require ceiling insulation to have uniform thickness and density.	No corresponding requirement.	
§ 460.102(b)(4) would establish an acceptable batt and blanket insulation combination for compliance with the floor insulation requirement in climate zone 4.	No corresponding requirement.	
§ 460.102(b)(5) would identify certain skylights not subject to SHGC requirements.	No corresponding requirements.	
§ 460.102(b)(6) would establish *U*-factor alternatives for the *R*-value requirements under § 460.102(b)(1).	No corresponding requirements.	
§ 460.102(b)(7) would establish a maximum ratio of 12 percent for glazed fenestration area to floor area under the prescriptive option.	No corresponding requirements.	
§ 460.102(c)(1) would establish maximum building thermal envelope U_o requirements by home size and climate zone.	§ 3280.506(a) establishes maximum building thermal envelope U_o requirements by climate zone.	The proposed maximum building thermal envelope U_o requirements would be lower than the corresponding maximum U_o requirements under § 3280.506(a). Compliance with the proposed U_o requirements would achieve compliance with the U_o requirements under the HUD Code.
§ 460.102(c)(2) would establish maximum area-weighted vertical fenestration *U*-factor requirements in climate zones 3 and 4.	No corresponding requirements.	
§ 460.102(c)(3) would establish maximum area-weighted average skylight *U*-factor requirements in climate zones 3 and 4.	No corresponding requirements.	
§ 460.102(c)(4) would authorize windows, skylights and doors containing more than 50 percent glazing by area to satisfy the SHGC requirements of § 460.102(a) on the basis of an area-weighted average.	No corresponding requirements.	
§ 460.102(d)(1)		[Reserved].
§ 460.102(d)(2)		[Reserved].
§ 460.102(d)(3) would establish a method of determining total *R*-value where multiple layers comprise a component.	§ 3280.508(a) and (b) reference the Overall *U*-values and Heating/Cooling Loads—Manufactured Homes method and the 1997 ASHRAE Handbook of Fundamentals.	
§ 460.102(d)(4)		[Reserved].
§ 460.102(d)(5)		[Reserved].
§ 460.102(d)(6) would establish prescriptive default *U*-factor values.	§ 3280.508(a) and (b) reference the Overall *U*-values and Heating/Cooling Loads—Manufactured Homes method and the 1997 ASHRAE Handbook of Fundamentals.	
§ 460.102(d)(7)		[Reserved].
§ 460.102(d)(8) would establish prescriptive default *U*-factor values.	No corresponding requirements.	
§ 460.102(e)(1) would establish a method of determining U_o.	§ 3280.508(a) and (b) reference the Overall *U*-values and Heating/Cooling Loads—Manufactured Homes method and the 1997 ASHRAE Handbook of Fundamentals.	
§ 460.102(e)(2)		[Reserved].

TABLE III.2—CROSSWALK OF PROPOSED STANDARDS WITH THE HUD CODE—Continued

DOE Proposed rule (10 CFR part 460)	HUD Code (24 CFR part 3280)	Notes
§ 460.102(e)(3) would establish default fenestration and door *U*-factor and fenestration SHGC values.	§ 3280.508(a) and (b) reference the Overall *U*-values and Heating/Cooling Loads—Manufactured Homes method and the 1997 ASHRAE Handbook of Fundamentals. These references contain default values.	DOE's proposed default values originate from the 2015 IECC. These default values generally result in lower performance than the HUD Code values. DOE expects compliance with the proposed rule to result in compliance with the HUD Code.
§ 460.103(a) would require insulating materials to be installed according to the manufacturer installation instructions and the prescriptive requirements of Table 460.103.	No corresponding requirements.	
§ 460.103(b) would establish requirements for the installation of batt, blanket, loose fill, and sprayed insulation materials.	No corresponding requirements.	
§ 460.104 would require manufactured homes to be sealed against air leakage at all joints, seams, and penetrations associated with the building thermal envelope in accordance with the manufacturer's installation instructions and the requirements set forth in Table 460.104.	§ 3280.505 establishes air sealing requirements of building thermal envelope penetrations and joints.	
§ 460.201(a) would require each manufactured home to be equipped with a duct system that must be sealed to limit total air leakage to less than or equal to 4 cfm per 100 square feet of floor area when tested according to § 460.201(b) and specifies that building framing cavities are not to be used as ducts or plenums.	§ 3280.715(a)(4) establishes requirements for airtightness of supply duct systems.	
§ 460.201(b)	....	[Reserved].
§ 460.202(a) would require at least one thermostat to be provided for each separate heating and cooling system installed by the manufacturer.	§ 3280.707(e) requires that each space heating, cooling, or combination heating and cooling system be provided with at least one adjustable automatic control for regulation of living space temperature.	Both the proposed rule and the HUD Code would require the installation of at least one thermostat that is capable of maintaining zone temperatures.
§ 460.202(b) would require that installed thermostats controlling the primary heating or cooling system be capable of maintaining different set temperatures at different times of day.	No corresponding requirements.	
§ 460.202(c) would require heat pumps with supplementary electric resistance heat to be provided with controls that, except during defrost, prevent supplemental heat operation when the pump compressor can meet the heating load.	§ 3280.714(a)(1)(ii) requires heat pumps to be certified to comply with ARI Standard 210/240–89, heat pumps with supplemental electrical resistance heat to be sized to provide by compression at least 60 percent of the calculated annual heating requirements of the manufactured home, and that a control be provided and set to prevent operation of supplemental electrical resistance heat at outdoor temperatures above 40 °F.	Both the proposed rule and the HUD Code would require heat pumps with supplemental electric resistance heat to prevent supplemental heat operation when the heat pump compressor can meet the heating load of the manufactured home.
§ 460.203(a) would establish requirements for the installation of service water heating systems.	No corresponding requirements.	
§ 460.203(b) would require any automatic and manual controls, temperature sensors, pumps associated with service water heating systems to be accessible.	No corresponding requirement.	
§ 460.203(c) would establish requirements for heated water circulation systems.	No corresponding requirements.	
§ 460.203(d) would establish requirement for the insulation of hot water pipes.	No corresponding requirements.	
§ 460.204 would establish requirements for mechanical ventilation system fan efficacy.	No corresponding requirements	HUD requirements at § 3280.103(b) do not overlap with DOE's proposal. DOE's proposal is for fan electrical efficiency, while HUD requirements specify minimum and maximum air flow rates.
§ 460.205 would establish requirements for heating and cooling equipment sizing.	No corresponding requirements.	

E. Compliance and Enforcement

Although DOE is not considering compliance and enforcement in this proposed rule, DOE anticipates assessing compliance and enforcement mechanisms in a future rulemaking. As a result, the costs and benefits resulting from any compliance and enforcement mechanism are not included in the economic impact analysis that is included in this rulemaking. DOE anticipates it will provide a detailed analysis of the costs and benefits resulting from compliance and enforcement activities in its future rulemaking. A variety of possibilities may be considered in that rulemaking process including, but not limited to, the three options described in this paragraph. First, HUD could directly administer a compliance and enforcement program for DOE's manufactured housing regulations via the existing HUD system outlined at 24 CFR 3282. This option would require that HUD adopt the energy conservation standards resulting from this rulemaking into its Manufactured Home Construction and Safety Standards. Second, DOE could implement a compliance and enforcement program mirroring HUD's system codified at 24 CFR 3282. Third, manufacturers could self-certify compliance to DOE by submitting documentation attesting that manufactured homes are compliant with DOE regulations. This third compliance option could be paired with a variety of enforcement mechanisms ranging from unannounced inspections and audits to a system mirroring HUD's enforcement system at 24 CFR 3282.

By way of background, under HUD's compliance and enforcement system, manufacturers are required to: (1) Contract for services with a HUD accepted Design Approval Primary Inspection Agency (DAPIA) to evaluate their designs and quality assurance manual for conformance with the Standards and Regulations; and (2) contract for services with a HUD accepted Production Inspection Primary Inspection Agency (IPIA) to evaluate, through on-going surveillance of the production process, that each plant is continuing to follow its DAPIA approved quality assurance manual and quality control procedures and to verify that each factory is continuing to produce homes in conformance with the Standards. In addition, the actions of all primary inspection agencies (DAPIAs, IPIAs) and State Administrative Agencies (SAAs) are monitored to determine whether they are fulfilling their responsibilities under HUD's regulatory system. In addition, manufacturers are also subject to system of notification and correction procedures whenever they produce homes that contain imminent safety hazards or failures to conform to the HUD standards.

DOE seeks comment on potential options for compliance and enforcement to be considered in a future rulemaking, including information regarding the rationale for any recommended option. DOE also seeks comment on the estimated costs (only direct compliance and enforcement costs, not engineering costs for redesign) and time (design review validation, inspection frequency and duration, administrative procedures) associated with the potential options.

IV. Economic Impacts and Energy Savings

A. Economic Impacts on Individual Purchasers of Manufactured Homes

DOE used the LCC and payback period (PBP) analyses developed during the MH working group negotiations to inform the development of the proposed rule based on the economic impacts on individual purchasers of manufactured homes. The LCC of a manufactured home refers to the total homeowner expense over the life of the manufactured home, consisting of purchase expenses (*i.e.*, mortgage or cash purchase) and operating costs (*i.e.*, energy costs). To compute the operating costs, DOE discounted future operating costs to the time of purchase and summed them over the 30-year lifetime of the home used for the purpose of analysis in this rulemaking. The PBP refers to the estimated amount of time (in years) for manufactured homeowners to recover the increased purchase cost (including installation) of their homes through lower operating costs. DOE calculates the PBP by dividing the incremental increase in purchase cost by the reduction in average annual operating costs that would result from this proposed rule.

The LCC analysis demonstrates that increased purchase prices would be offset by the benefits manufactured homeowners would experience in operating cost savings under the proposed rule. DOE has evaluated these projected impacts on individual manufactured homeowners by analyzing the potential impacts to LCC, energy savings, and purchase price of manufactured homes under the proposed rule. For the purpose of this economic analysis, DOE compared the purchase price and LCC for manufactured homes built in accordance with the proposed rule relative to a baseline manufactured home built in compliance with the minimum requirements of the HUD Code. Specifically, DOE performed energy simulations on manufactured homes located in 19 geographically diverse locations across the United States, accounting for five common heating fuel/system types and two typical industry sizes of manufactured homes (single-section and double-section[6] manufactured homes). Further information on how DOE calculated LCC impacts and energy savings for the alternative efficiency levels discussed here is included in chapter 8 of the TSD. DOE requests comment on the methodology and results of the LCC analysis.

Table IV.1 provides the preliminary average purchase price increases to manufactured homes associated with the proposed rule under each of the proposed climate zones. These costs are based on estimates for the increased costs associated with more energy efficient components, as provided by the MH working group. *See* EERE–2009–BT–BC–0021–0091. These costs are discussed in further detail in chapter 5 and chapter 9 of the TSD.

TABLE IV.1—AVERAGE MANUFACTURED HOME PURCHASE PRICE AND PERCENTAGE INCREASES UNDER THE PROPOSED RULE BY CLIMATE ZONE

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 1	2,422	5.3	3,748	4.5
Climate Zone 2	2,348	5.1	3,668	4.4

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[6] Double-section manufactured homes were used to represent all multi-section homes. Double-section manufactured homes have the largest market share by shipments (about 98 percent) of all multi-section homes.

TABLE IV.1—AVERAGE MANUFACTURED HOME PURCHASE PRICE AND PERCENTAGE INCREASES UNDER THE PROPOSED RULE BY CLIMATE ZONE—Continued

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 3	2,041	4.5	2,655	3.2
Climate Zone 4	2,208	4.8	2,877	3.4
National Average	2,226	4.9	3,109	3.7

Although DOE preliminarily has determined that the proposed standards would result in increased purchase prices of manufactured homes, manufactured homeowners, on average, would realize significant LCC savings and energy savings as a result of the proposed rule. DOE requests comment on affordability with respect to the projected average increase in purchase cost (see Table IV.1 below) on the ability of low-income consumers to obtain credit and financing to purchase a manufactured home. DOE also requests comments on affordability in context of the potential for reduced operating costs (energy bills) and total LCC.

Figure IV.1 illustrates the average annual energy cost savings for space heating and air conditioning for the first year of occupation by geographic location under the proposed rule based on the estimated fuel costs provided in chapter 8 of the TSD. Heating cost savings are generally higher than cooling cost savings, so locations with cold climates would have higher amounts of energy cost savings because of the reduced heating energy use.

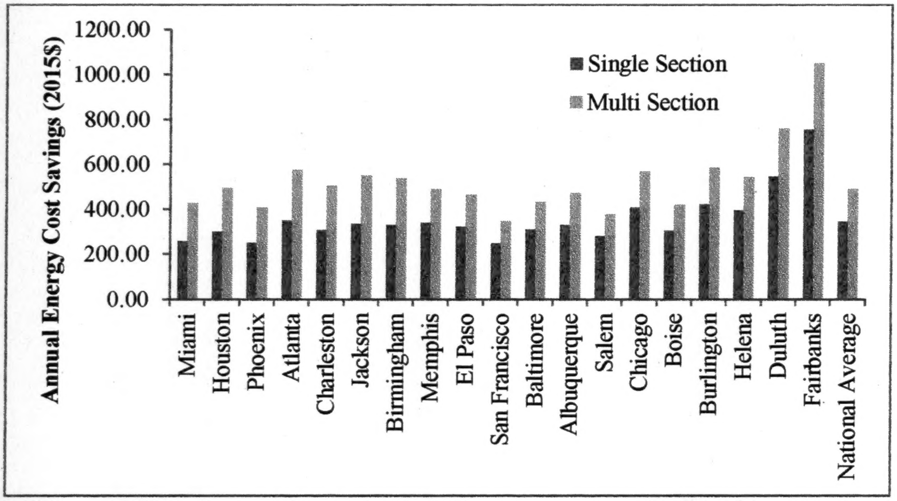

Figure IV.1. Annual Energy Cost Savings under the Proposed Rule

Figure IV.2 illustrates the average 30-year LCC savings by geographic location (averaged across the five different heating fuel/system types) associated with the proposed rule for both single-section and multi-section manufactured homes. As discussed in detail in chapter 9 of the TSD, Figure IV.2 accounts for LCC savings and impacts over a 30-year period of analysis, including energy cost savings and mortgage payment increases discounted to a present value using the discount rates discussed in chapter 4 of the TSD. These preliminary results also are based on the costs associated with energy conservation improvements, as discussed in chapter 5 of the TSD.

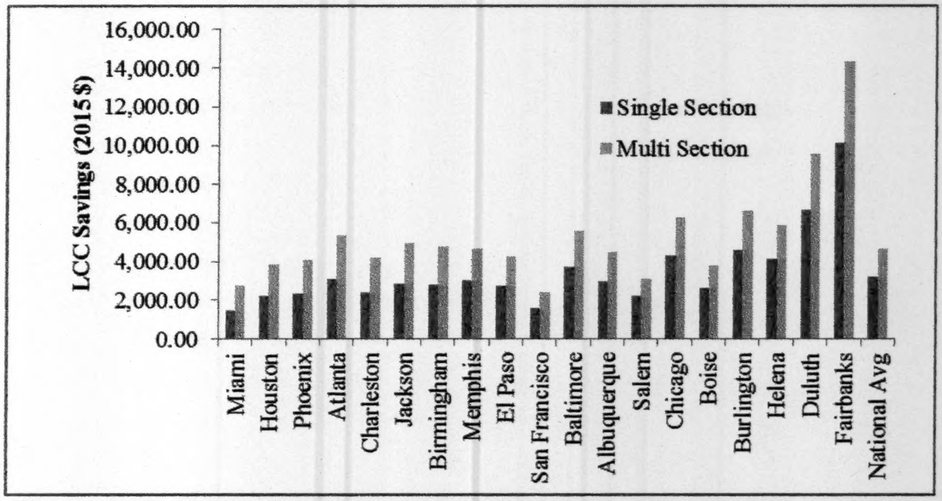

Figure IV.2. Thirty-Year Lifecycle Cost Savings under the Proposed Rule

The estimated LCC impacts under Figure IV.2 vary by location for three primary reasons. First, each geographic location analyzed is situated in one of four proposed climate zones and therefore would be subject to different energy conservation requirements. Second, geographic locations within the same climate zone would experience different levels of energy savings. For example, both El Paso and Baltimore would be situated in climate zone 3. However, a manufactured home in Baltimore that meets the proposed climate zone 3 requirements would experience greater savings than a manufactured home in El Paso that meets the proposed climate zone 3 requirements because cooler climates would have greater energy cost savings as a result of greater reductions in heating costs. Finally, the level of energy cost savings depends on the type of heating system installed and fuel type used in a manufactured home. As discussed in chapter 8 of the TSD, DOE has accounted for regional differences in heating systems and fuel types commonly installed in manufactured housing.

Table IV.2 provides the preliminary national average LCC savings under the proposed rule and annual energy cost savings associated with the proposed rule for space heating and air conditioning (and percent reduction in space heating and cooling costs), both of which are measured against a baseline manufactured home constructed in accordance with the HUD Code. As discussed in further detail in chapter 9 of the TSD, each geographic location preliminary has been determined to result in LCC savings and energy savings, on average.

TABLE IV.2—NATIONAL AVERAGE PER-HOME SAVINGS UNDER THE PROPOSED RULE

	Single-section	Multi-section
Lifecycle Cost Savings (30 Years)	$3,211	$4,625
Annual Energy Cost Savings	345	490

Table IV.3 shows the benefits and costs to the manufactured homeowner associated with the proposed rule, expressed in terms of annualized values.

TABLE IV.3—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOMEOWNERS UNDER THE PROPOSED RULE

	Discount Rate (%)	Monetized (million 2015$/year)		
		Primary estimate **	Low estimate **	High estimate **
Benefits *				
Operating (Energy) Cost Savings	7	516	400	688
	3	843	617	1,191
Costs *				
Incremental Purchase Price Increase	7	220	165	285
	3	277	192	378
Net Benefits/Costs *				
	7	296	235	403
	3	566	425	813

* The benefits and costs are calculated for homes shipped in 2017–2046.

** The Primary, Low, and High Estimates utilize forecasts of energy prices from the 2015 AEO Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

Figure IV.3 illustrates the nationwide average simple payback period (purchase price increase divided by first year energy cost savings) under the proposed rule. The estimated simple payback periods under Figure IV.3 vary by geographic location based on the different climate zone requirements for manufactured housing, geographic climatic differences within climate zones, and the type of heating system installed and fuel type used in a manufactured home.

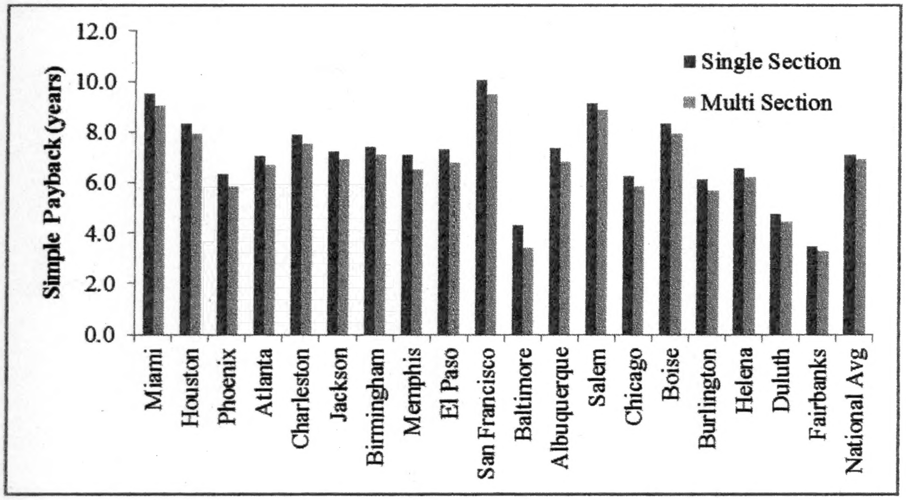

Figure IV.3. Simple Payback Period of the Proposed Rule

B. Manufacturer Impacts

DOE performed a manufacturer impact analysis (MIA) to estimate the potential financial impact of energy conservation standards on manufacturers of manufactured homes. The MIA relied on the Government Regulatory Impact Model (GRIM), an industry cash-flow model used to estimate changes in industry value as a result of energy conservation standards. The key GRIM inputs are data on: Industry financial metrics, manufacturer production cost estimates, shipments forecasts, conversion expenditures estimates, and assumptions about manufacturer markups. The primary output of the GRIM is industry net present value (INPV), which is the sum of industry annual cash flows over the analysis period (2016–2046), discounted using the industry weighted average cost of capital. The GRIM has a slightly different analysis period than the NIA and LCC because it takes into account the conversion period, the time between the announcement of the standard and the effective date of the standard, since manufacturers may need to make upfront investments to bring their covered products ahead of the standard going into effect. The GRIM estimates the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a base case and the standards case. To capture the uncertainty relating to manufacturer pricing strategy following new standards, the GRIM estimates a range of possible impacts under different markup scenarios. Each of the inputs and output is discussed in chapter 12 of the NOPR TSD. DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a base case and a standards case. The percent change in INPV between the base and standards cases represents the financial impact of new energy conservation standards on manufacturers of manufactured homes. Additional detail on the GRIM can be found in Appendix 12A.

DOE conducted the MIA analysis in three phases. In Phase 1 of the MIA, DOE analyzed the upfront investments, conversation costs, manufacturers would need to make to bring their products into compliance with the new energy conservation standards. These upfront investments include product conversion costs and capital conversion costs. Product conversion costs are one-time investments in research, development, labeling updates, and other costs necessary to make product designs comply with energy conservation standards. Capital conversion costs are one-time investments in property, plant and equipment to adapt or change existing production lines to fabricate and assemble new product designs that comply with the energy conservation standards.

DOE calculated that the proposed rule would result in an average upfront investment, or conversion cost, of $37,500 per manufacturer. This figure includes $32,500 per manufacturer for product conversion costs and $5,000 per manufacturer for capital conversion costs. DOE assumed in its analysis that manufacturers would incur all upfront costs in the year following publication of the final rule. Additional detail on the conversion costs can be found in chapter 12 of the TSD.

In Phase 2 of the MIA, DOE analyzed the effect the proposed standards would have on manufacturer production costs. To be conservative in its analysis, DOE assumed that all units sold are at the HUD minimum. Thus, the analysis does not account for the reduced impact on units sold that may exceed the HUD minimum. Based on this analysis, DOE estimates average manufacturer production costs would increase by $1,321 for each single-section unit and by $1,840 for each multi-section unit. The estimated increases in manufacturer production costs are derived from the estimated increases in purchase price, the retail markup and the manufacturer markup on these units. As a starting point, DOE used the retail prices of manufactured homes in 19 cities that include all four proposed climate zones. The retail prices were for the base case in each city and the standard case in each city. Using public sources of information, including company SEC 10–K filings[7] and corporate annual reports, DOE applied a consistent manufacturer markup of 1.25 and a retail markup of 1.30 for the base cases and standards cases. DOE used these two markups, and along with a sales tax multiplier, to back-calculate the manufacturer production cost for each city. Details on the derivation of the sales tax multiplier, retail markup, manufacturer markup, and manufacturer production cost for each city can be found in chapter 12 of the NOPR TSD. DOE requests comments on whether other manufacturer and retailer markups for base case and standards cases should be considered (*e.g.,* a combined mark-up of 2.30 has historically been used in the past by HUD to assess combined manufacturer and retailer mark-ups to determine potential first cost impacts on consumers).

In Phase 3 of the MIA, DOE modeled two scenarios that reflect changes in the manufacturer's ability to pass on their upfront investments and increases in production costs to the customers. As manufacturer production costs increase, manufacturers may need to adjust their markup structure. For the MIA, DOE modeled two standards case markup scenarios for manufactured homes to represent the uncertainty regarding the potential impacts on prices and profitability for manufactured home manufacturers following the implementation of the proposed rule. DOE modeled a high and a low scenario for a manufacturer to pass on their upfront investments and increases in production costs to the customer: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of operating profit markup scenario. These scenarios lead to different markup values that, when applied to the inputted manufacturer production costs, result in varying revenue and cash flow impacts on the manufacturer.

Under the preservation of gross margin percentage markup scenario, manufacturers maintain their current average markup of 1.25 even as production costs increase. Manufacturers are able to maintain the same amount of profit as a percentage of revenues, suggesting that they are able to pass on the costs of compliance to their customers. DOE considers this scenario the upper bound to industry profitability.

In the preservation of per unit operating profit scenario, manufacturer markups are set so that operating profit one year after the compliance date of the amended energy conservation standard is the same as in the base case on a per unit basis. Under this scenario, as the costs of production increase under a standards case, manufacturers are generally required to reduce their markups. The implicit assumption behind this markup scenario is that the industry can only maintain its operating profit in absolute dollars per unit after compliance with the new standard is required. Therefore, operating margin is reduced between the base case and standards case. This markup scenario represents a lower bound to industry profitability under an amended energy conservation standard.

DOE calculated an industry average discount rate of 9.2% based on SEC filings for public manufacturers of manufactured homes. This discount rate was used to estimate the time-value of money when discounting future cash flows. The INPV is the sum of the discounted cash flows over the analysis period, which begins in 2016 and ends in 2046. When applying the two different markup scenarios, DOE is able to estimate a range of potential impacts to INPV and the industry. DOE compares the INPV of the base case to that of the proposed level. The difference between INPV in the base case and INPV at the proposed level is an estimate of the economic impacts on the industry.

TABLE IV.4—INPV RESULTS: PRESERVATION OF GROSS MARGIN PERCENTAGE SCENARIO *

	Single-section	Multi-section	Total industry
Base Case INPV (million 2015$)	229.0	487.8	716.7
Standards Case INPV (million 2015$)	227.9	485.8	713.6
Change in INPV (million 2015$)	(1.1)	(2.0)	(3.1)
Change in INPV (%)	−0.5%	−0.4%	−0.4%
Total Conversion Costs (million 2015$)	0.5	1.1	1.6

* Values in parentheses are negative values.

TABLE IV.5—INPV RESULTS: PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO *

	Single-section	Multi-section	Total industry
Base Case INPV (million 2015$)	229.0	487.8	716.7
Standards Case INPV (million 2015$)	215.0	465.0	680.0
Change in INPV (million 2015$)	(14.0)	(22.8)	(36.8)
Change in INPV (%)	−6.1%	−4.7%	−5.1%
Total Conversion Costs (million 2015$)	0.5	1.1	1.6

* Values in parentheses are negative values.

For single-section units, the base case INPV is $229.0 million. The proposed standard could result in a drop of industry value ranging from −0.5 percent to −6.1 percent, or a loss of $1.1 million to $14.0 million. For multi-section units, the base case INPV is $487.8 million. The proposed standard could result in a drop of industry value ranging from −0.4 percent to −4.7 percent, or a loss of $2.0 million to $22.8 million. For the industry as a whole, the base case INPV is $716.7 million. The proposed standard could result in a drop in INPV of −0.4 percent to −5.1 percent, or a loss of $3.1 million to $36.8 million. Industry conversion costs total $1.6 million at the proposed level.

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[7] U.S. Securities and Exchange Commission. Annual 10–K Reports. Various Years. <*http://sec.gov*>.

Though DOE's analysis assumes all manufactured homes are sold at the HUD minimum level (analyzed as the baseline in this rulemaking), select manufactured homes are available in the market at higher efficiencies. If a manufacturer currently produces homes that are more efficient than the HUD minimum level, the impacts associated with that manufacturer will be reduced. For example, the incremental manufacturer production cost would be smaller for a manufacturer already producing homes above the minimum level. If a manufacturer already produces homes compliant with the proposed level, then the manufacturer would experience no conversion costs or increases in production costs for those models.

DOE requests comment on the conversion costs for proposed standard. DOE welcomes additional data regarding the cost to redesign model plans to meet the proposed standard and the capital expenditures that the proposed standard would require.

DOE also requests comment on the average manufacturer markup for single-section and multi-section homes, including any differences in markup between minimally compliant homes and homes with upgrades that improve energy performance. Additionally, DOE requests comment on the average retail markup in the industry.

C. Nationwide Impacts

DOE's NIA projects a net benefit to the nation as a whole as a result of the proposed rule in terms of NES and the NPV of total customer costs and savings that would be expected as a result of the proposed rule in comparison with the minimum requirements of the HUD Code. DOE calculated the NES and NPV based on annual energy consumption and total construction and lifecycle cost data from the LCC analysis (developed during the MH working group negotiation process) described in section IV.A of this **SUPPLEMENTARY INFORMATION** and shipment projections. DOE projected the energy savings, operating cost savings, equipment costs, and NPV of customer benefits sold in a 30-year period from 2017 through 2046. The analysis also accounts for costs and savings for a manufactured home lifetime of 30 years. A detailed description of the NIA methodology is provided in chapter 11 of the TSD. DOE requests comment on the methodology and initial findings of the NIA.

DOE developed a shipments model to forecast the shipments of manufactured homes during the analysis period. DOE first gathered historical shipments spanning 1990–2013 from a report developed and written by the Institute for Building Technology and Safety and published by the Manufactured Housing Institute.[8] Then, using the growth rate (1.8 percent) in new residential housing starts from the *AEO 2015,* DOE projected the number of manufactured housing shipments from 2014 through 2046 in the base case (no new standards adopted by DOE). For the standards case shipments, DOE used this same growth rate estimate (1.8 percent), but also applied an estimate for price elasticity of demand. Price elasticity of demand (price elasticity) is an economic concept that describes the change of the quantity demanded in response to a change in price. DOE used the price elasticity value of −0.48 (a 10-percent price increase would translate to a 4.8-percent reduction in manufactured home shipment) based on a study published in the *Journal of Housing Economics*[9] for estimating standards case shipments.

In a second sensitivity analysis, DOE also considered a standards case shipment scenario in which the price elasticity is −2.4 (instead of −0.48) This would project a 2.4 percent reduction in shipments based on the projected cost increases in the proposed rule. DOE based this sensitivity case on previous HUD estimates of −2.4 price elasticity based on a 1992 paper written by Carol Meeks.[11] This would translate to a 12 percent reduction in shipments based on a 5 percent increase in price as forecasted in the proposed rule.

A detailed description of the shipments methodology is provided in chapter 10 of the TSD. DOE requests comment on the methodology and initial findings of the shipments analysis.

Table IV.6 and Table IV.7 reflect the NES results over a 30-year analysis period under the proposed rule on a primary energy savings basis. Primary energy savings apply a factor to account for losses associated with generation, transmission, and distribution of electricity. Primary energy savings differ among the different climate zones because of differing energy conservation requirements in each climate zone and different shipment projections in each climate zone.

TABLE IV.6—CUMULATIVE NATIONAL ENERGY SAVINGS OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME

	Single-section (quads)	Multi-section (quads)
Climate Zone 1	0.171	0.281
Climate Zone 2	0.124	0.234
Climate Zone 3	0.259	0.449
Climate Zone 4	0.279	0.382
Total	0.833	1.346

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[8] See *Manufactured Home Shipments by Product Mix (1990–2013),* Manufactured Housing Institute (2014).

[9] See Marshall, M.I. & Marsh, T.L. Consumer and investment demand for manufactured housing units. *J. Hous. Econ.* 16, 59–71 (2007).

[11] Meeks, C., 1992, Price Elasticity of Demand for Manufactured Homes: 1961–1989.

TABLE IV.7—CUMULATIVE NATIONAL ENERGY SAVINGS OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME

	Single-section (%)	Multi-section (%)
Climate Zone 1	25.3	29.9
Climate Zone 2	25.4	30.6
Climate Zone 3	26.0	28.1
Climate Zone 4	25.4	26.5
Total	25.6	28.4

Table IV.8 and Table IV.9 illustrate the cumulative NES over the 30-year analysis period under the proposed rule on a FFC energy savings basis. FFC energy savings apply a factor to account for losses associated with generation, transmission, and distribution of electricity, and the energy consumed in extracting, processing, and transporting or distributing primary fuels. NES differ amongst the different climate zones because of differing energy efficiency requirements in each climate zone and different shipment projections in each climate zone.

TABLE IV.8—CUMULATIVE NATIONAL ENERGY SAVINGS, INCLUDING FULL-FUEL-CYCLE OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME

	Single-section (quads)	Multi-section (quads)
Climate Zone 1	0.179	0.294
Climate Zone 2	0.130	0.245
Climate Zone 3	0.272	0.474
Climate Zone 4	0.303	0.416
Total	0.884	1.428

TABLE IV.9—CUMULATIVE NATIONAL ENERGY SAVINGS, INCLUDING FULL-FUEL-CYCLE OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME

	Single-section (%)	Multi-section (%)
Climate Zone 1	25.3	29.9
Climate Zone 2	25.4	30.6
Climate Zone 3	26.0	28.1
Climate Zone 4	25.4	26.6
Total	25.6	28.3

Table IV.10 and Table IV.11 illustrate the NPV of customer benefits over the 30-year analysis period under the proposed rule for a discount rate of 7 percent and 3 percent respectively. The NPV of manufactured homeowner benefits differ among the different climate zones because there are different up-front costs and operating cost savings associated with each climate zone and different shipment projections in each climate zone. All climate zones have a positive NPV for both discount rates under this proposed rule.

TABLE IV.10—NET PRESENT VALUE OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME AT A 7% DISCOUNT RATE

	Single-section (billion 2015$)	Multi-section (billion 2015$)
Climate Zone 1	0.19	0.34
Climate Zone 2	0.16	0.35
Climate Zone 3	0.39	0.74
Climate Zone 4	0.52	0.74
Total	1.26	2.18

TABLE IV.11—NET PRESENT VALUE OF MANUFACTURED HOMES PURCHASED 2017–2046 WITH A 30-YEAR LIFETIME AT A 3% DISCOUNT RATE

	Single-section (billion 2015$)	Multi-section (billion 2015$)
Climate Zone 1	0.66	1.16
Climate Zone 2	0.54	1.10
Climate Zone 3	1.22	2.26
Climate Zone 4	1.60	2.24
Total	4.03	6.75

DOE considered two sensitivity analyses relating to shipments. First, DOE considered a shipment scenario in which the growth rate is 6.5 percent (instead of 1.8 percent) based on the trend in actual manufactured home shipments from 2011 to 2014. This growth rate applies to both the base case and standards case shipments. DOE's primary scenario is based on the residential housing start data from *AEO 2015.* The sensitivity analysis calculates the increase in NES and NPV associated with a much larger future market for manufactured homes. See Table IV.12 for results of the sensitivity analysis. A detailed description of the sensitivity analysis is provided in appendix 11A of the TSD. DOE requests comment on the shipment growth rate assumption used in the shipments analysis.

TABLE IV.12—SHIPMENTS GROWTH RATE SENSITIVITY ANALYSIS NES AND NPV RESULTS

	National energy savings (full fuel cycle quads)	Net present value 3% discount rate (billion 2015$)	Net present value 7% discount rate (billion 2015$)
1.8% Shipment Growth (primary scenario)	2.3	10.93	3.47
6.5% Shipment Growth	5.8	26.19	7.38

In a second sensitivity analysis, DOE considered a standards case shipment scenario in which the price elasticity is −2.4 (instead of −0.48). HUD has used an estimate of −2.4 in analysis of revisions to its regulations[10] promulgated at 24 CFR 3282 based on a 1992 paper written by Carol Meeks.[11] DOE's primary scenario is based on a study published in 2007 in the *Journal of Housing Economics.* The sensitivity analysis calculates the decrease in NES and NPV associated with a larger decrease in shipments resulting from the more negative price elasticity value. Price elasticity of −2.4 would translate to a 12 percent reduction in shipments based on a 5 percent increase in price as projected by the proposed rule. Price elasticity of −0.48 would project a 2.4 percent reduction in shipments based on the projected cost increases in this proposed rule. See Table IV.13 for results of the sensitivity analysis. A detailed description of the sensitivity analysis is provided in appendix 11A of the TSD. DOE requests comment on the price elasticity assumption used in the standards case shipments analysis.

TABLE IV.13—PRICE ELASTICITY OF DEMAND SENSITIVITY ANALYSIS NES AND NPV RESULTS

	National energy savings (full fuel cycle quads)	Net present value 3% discount rate (billion 2015$)	Net present value 7% discount rate (billion 2015$)
−0.48 Price Elasticity (primary scenario)	2.3	10.93	3.47
−2.4 Price Elasticity	2.1	10.04	3.19

D. Nationwide Environmental Benefits

DOE's analyses indicate that this proposed rule would reduce overall demand for energy in manufactured housing. The proposed rule also would produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Emissions avoided under the proposed rule would be directly proportional to energy savings that would be achieved. DOE has based these estimates on a 30-year analysis period of manufactured home shipments, accounting for a 30-year home lifetime. DOE's analysis estimates reductions in emissions of six pollutants associated with energy savings: Carbon dioxide (CO_2), mercury (Hg), nitric oxide and nitrogen dioxide (NO_X), sulfur dioxide (SO_2), methane (CH_4), and nitrous oxide (N_2O). These reductions are referred to as "site" emissions reductions. Furthermore, DOE estimated reductions in emissions associated with the production of these fuels (extracting, processing, transporting to power plants or homes). Such reductions are referred to as

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[10] For example, see *http://www.regulations.gov/#!documentDetail;D=HUD-2014-0033-0001.*

[11] Meeks, C., 1992, Price Elasticity of Demand for Manufactured Homes: 1961 to 1989.

"upstream" emissions reductions. Together, site emissions reductions and upstream emissions reductions account for the FFC. In accordance with DOE's FFC Statement of Policy (*see* 76 FR 51282 (Aug. 18, 2011), 77 FR 49701 (Aug. 17, 2012)), the FFC analysis includes impacts on emissions of CH_4 and N_2O, both of which are recognized as greenhouse gases (GHGs).

The emissions reduction estimates are based on emission intensity factors for each pollutant, which depend on the type of fuel associated with energy savings (electricity, natural gas, liquefied petroleum gas, fuel oil). These emission intensity factors were derived from data in the *AEO 2015*[12] and from the EPA GHG Emissions Factors Hub.[13] Full details of this methodology are described in chapter 13 of the TSD. Table IV.14 reflects the emissions reductions for both single-section and multi-section manufactured homes. DOE requests comment on the methodology and initial findings of the emissions analysis.

TABLE IV.14—EMISSIONS REDUCTIONS AS A RESULT OF THE PROPOSED RULE

Pollutant	Single-section	Multi-section
Site Emissions Reductions		
CO_2 (million metric tons)	56.5	91.1
Hg (metric tons)	0.0904	0.146
NO_X (thousand metric tons)	223	356
SO_2 (thousand metric tons)	27.6	44.4
CH_4 (thousand metric tons)	3.78	6.09
N_2O (thousand metric tons)	0.632	1.02
Upstream Emissions Reductions		
CO_2 (million metric tons)	4.01	6.45
Hg (metric tons)	0.000944	0.00153
NO_X (thousand metric tons)	51.8	83.2
SO_2 (thousand metric tons)	0.615	0.991
CH_4 (thousand metric tons)	239	385
N_2O (thousand metric tons)	0.0294	0.0474
Total Emissions Reductions		
CO_2 (million metric tons)	60.5	97.6
Hg (metric tons)	0.0913	0.148
NO_X (thousand metric tons)	275	439
SO_2 (thousand metric tons)	28.2	45.4
CH_4 (thousand metric tons)	243	391
N_2O (thousand metric tons)	0.661	1.07

Additionally, DOE considered the estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that would be expected to result from the proposed rule. In order to make this calculation similar to the calculation of the net present value of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the analysis period (2017–2046) under the proposed rule. DOE has calculated the monetary values for each of these emissions using the social cost of carbon (SCC) methodology, which estimates the monetized damages associated with an incremental increase in carbon emissions within a given year. The SCC is intended to account for, but is not limited to, changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. SCC estimates are given in terms of dollars per metric ton of CO_2 emitted.

The SCC is comprised of monetization estimate results from three different integrated assessment models, which have different methodologies for calculating the damages associated with CO_2 emissions. The SCC values used for this rulemaking were generated using the most recent versions of the three integrated assessment models that have been published in peer-reviewed literature.[14] As a result, four SCC estimates of emitted CO_2 value are available, representing different aggregation of these three models and utilization of a variety of discount rates. Three sets of the monetization factors utilize the average impacts projected by the three assessment models that comprise the SCC. The fourth set of monetization factors utilizes the 95th percentile impacts of the three assessment models and is intended to capture higher than expected impacts. For the purposes of capturing the uncertainty of emitted CO_2 value, the interagency group recommends including all four sets of available SCC values. Full details of this methodology are described in chapter 14 of the TSD. These estimates have been developed by an interagency process and are presented with an acknowledgement of uncertainty. These results should be treated as revisable, as the estimates of emitted CO_2 monetary value evolve with improved scientific and economic understanding.

DOE also has estimated monetary benefits for NO_X emissions under the proposed rule. Estimates of the monetary value of reducing NO_X from stationary sources range from $489 to $5,023 per metric ton (2015$). DOE calculated monetary benefits using an intermediate value for NO_X emissions of $2,755 per metric ton (in 2015$), and real discount rates of 3 and 7 percent. DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings and has not included such monetization in the current analysis. DOE has similarly not included monetization of reductions in emissions of CH_4 or N_2O. DOE requests comments on the methodology and results of the monetization of emissions reductions benefits analysis. Table IV.15 provides the NPVs from the savings of reduced CO_2 and NO_X emissions resulting from manufactured homes built in accordance with the proposed rule.

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[12] *See* Energy Information Administration, *Annual Energy Outlook 2015 with Projections to 2040* (2015), available at *http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf.*

[13] *See* U.S. Environmental Protection Agency, *Emissions Factors for Greenhouse Gas Inventories* (2014), available at *http://www.epa.gov/climateleadership/documents/emission-factors.pdf.*

[14] *See* Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, Interagency Working Group on Social Cost of Carbon, United States Government. May 2013; (revised November 2013), *available at www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf.*

TABLE IV.15—NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER THE PROPOSED RULE

	Discount rate (%)	Net present value (million 2015$)	
		Single-section	Multi-section
Monetary Benefits			
CO_2, Average SCC Case	5	368.2	593.7
CO_2, Average SCC Case	3	1,810.9	2,920.5
CO_2, Average SCC Case	2.5	2,925.0	4,717.3
CO_2, 95th Percentile SCC Case	3	5,581.5	9,001.5
NO_X Reduction	3	311.5	498.6
	7	119.8	191.9

E. Total Benefits and Costs

As explained in greater detail in section IV of this **SUPPLEMENTARY INFORMATION** and in chapter 15 of the TSD, Table IV.16 reflects the total benefits and costs (from the manufactured homeowner's perspective) associated with the proposed rule, expressed in terms of annualized values.[15]

TABLE IV.16—TOTAL ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOMEOWNERS UNDER THE PROPOSED RULE

	Monetized (million 2015$/year)			
	Discount rate (%)	Primary estimate **	Low estimate **	High estimate **
Benefits*				
Operating (Energy) Cost Savings	7	516	400	688.
	3	843	617	1,191.
CO_2, Average SCC Case ***	5	63	46	85.
CO_2, Average SCC Case ***	3	241	176	331.
CO_2, Average SCC Case ***	2.5	365	266	503.
CO_2, 95th Percentile SCC Case ***	3	744	543	1,022.
NO_X Reduction at $2,773/metric ton ***	7	25	20	32.
	3	41	31	56.
Total (Operating Cost Savings, CO_2 Reduction and NO_X Reduction).	7 plus CO_2 range	604 to 1,285	466 to 962	805 to 1,742.
	7	783	596	1,052.
		1,126	824	1,578.
	2	947 to 1,628	694 to 1,191	1,332 to 2,269.
	3 plus CO_2 range.			
Costs*				
Incremental Purchase Price Increase	7	220	165	285.
	3	277	192	378.
Net Benefits/Costs*				
Total (Operating Cost Savings, CO_2 Reduction and NO_X Reduction, Minus Incremental Cost Increase to Homes).	7 plus CO_2 range	384 to 1,065	301 to 797	520 to 1,457.
	7	563	431	767.
		849	632	1,200.
	3	670 to 1,351	502 to 999	954 to 1,891.
	3 plus CO_2 range.			

*The benefits and costs are calculated for homes shipped 2017–2046.

**The Primary, Low, and High Estimates utilize forecasts of energy prices from the 2015_AEO Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

***The CO_2 values represent global monetized values (in 2015$) of the social cost of CO_2 emissions reductions over the analysis period under several different scenarios of the SCC model. The "average SCC case" refers to average predicted monetary savings as predicted by the SCC model. The "95th percentile case" refers to values calculated using the 95th percentile impacts of the SCC model, which accounts for greater than expected environmental damages. The value for NO_X (in 2015$) is the average of the low and high values used in DOE's analysis.

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[15] As stated above, DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2015, the year used for discounting the net present value of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table IV.16. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2017 that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this proposed rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider any comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rulemaking the most recent values and analyses resulting from the ongoing interagency review process.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that would occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of manufactured homes shipped in the 30-year period after the compliance date. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one ton of CO_2 in each year. These impacts would go well beyond 2100.

V. Regulatory Review

A. Executive Order 12866

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that this proposed standards address are as follows:

(1) Under current federal standards, manufactured homes typically conserve less energy than comparably built site-built and modular homes, and.

(2) There are external benefits resulting from improved energy conservation in manufactured housing. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

DOE has determined that this regulatory action is an "economically significant regulatory action" under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on this proposed rule and that the Office of Information and Regulatory Affairs (OIRA) in OMB review this proposed rule. DOE has presented the proposed rule and supporting documents, including the RIA, to OIRA for review and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in chapter 11 of the TSD for this rulemaking. They are available for public review in the Resource Room of DOE's Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except federal holidays.

DOE also has reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, federal agencies are required by these Executive Orders to, among other things:

(1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

For the reasons stated in the chapter 11 of the TSD and in section III of the document, DOE believes that this proposed rule is consistent with these principles.

B. Executive Order 13563

DOE has also reviewed this regulation pursuant to Executive Order 13563 (*see* 76 FR 3281, Jan. 21, 2011), which is supplemental to, and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes that Executive Order 13563 requires agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes." This proposed rule is consistent with these principles, including that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*www.energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for small manufacturers of manufactured homes that are the subject of this proposed rulemaking.

For the manufacturers of manufactured homes, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by NAICS code and industry description and are available at *http://www.sba.gov/content/table-small-business-size-standards*. The covered manufacturers are classified under NAICS 321991, "Manufactured Home (Mobile Home) Manufacturing." The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

DOE reviewed the potential standards considered in this NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. To better assess the potential impacts of this rulemaking on small entities, DOE conducted a more focused inquiry of the companies that could be small business manufacturers of manufactured homes. During its market survey, DOE used available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories, information from previous rulemakings, individual company Web sites, and market research tools (*e.g.*, Hoover's reports) to create a list of companies that manufacture or sell manufactured homes covered by this rulemaking.

To assess the potential impacts of this rulemaking on small entities, DOE conducted a focused inquiry of the companies that could be small business manufacturers of manufactured homes. During its market survey, DOE used available public information to identify potential small manufacturers. DOE's research involved individual company Web sites and market research tools (*e.g.*, Hoovers reports [16]) to create a list of companies that manufacture homes covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers.

DOE identified forty-six manufacturers of manufactured homes. Of the forty-six, DOE identified twenty-five manufacturers that qualified as small businesses. All small manufacturers identified are domestic manufacturers. DOE contacted all 25 identified manufactured home manufacturers for interviews. DOE spoke with two small manufacturers.

During discussions with small manufacturers, DOE asked participating companies to describe their major concerns with regard to the rulemaking. The primary concern cited by small manufacturers was the potential for an energy conservation standard to result in a shrinking market for manufactured homes. Manufacturers noted two possible reasons. First, they were concerned that the standard would be set at a level where the economics do not make sense for the home purchaser. One manufacturer specifically requested the Department perform an analysis that showed the proposed level would result in cost-savings for the home owner. Second, the manufacturers noted the possibility that cost increases for the baseline homes could potentially price out some consumers, specifically lower income consumers. One of the small manufacturers noted that the market for the minimally compliant homes is dominated by much larger manufacturers. In particular, they noted Clayton Homes is the biggest player in that market with roughly half of the overall market for manufactured homes.

Based on HUD data, research reports, and SEC filings, as described in section IV.C and chapter 12 of the TSD, DOE understands the retail prices, markups, and manufacturer production costs used in its manufacturer impact analysis are representative of the industry. DOE estimates that the proposed rule would reduce INPV by 0.4 to 5.1 percent. DOE did not receive sufficient quantitative data to conclude that small manufacturer would experience impacts that are substantially different from the industry-at-large.

Since the proposed standards could cause competitive concerns for small manufacturers, DOE cannot certify that the proposed standards would not have a significant impact on a substantial number of small businesses. DOE requests additional information and data regarding the number and market share of domestic small manufacturers of manufactured homes. DOE also requested information on the conversion costs small manufacturers would face and on other potential small business impacts related to the proposed energy conservation standards.

D. Paperwork Reduction Act

This rulemaking does not include any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

E. National Environmental Policy Act

DOE is preparing a draft Environmental Assessment (EA) pursuant to the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), DOE's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021), and DOE Order 451.1B. DOE is preparing the draft EA in parallel with this rulemaking, and it will be posted to the DOE Web site separately. Reduced emissions of air pollutants and greenhouse gases associated with electricity production and fuel usage are discussed in section IV.D of this **SUPPLEMENTARY INFORMATION**.

F. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and to carefully assess the necessity for such actions. The

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[16] Hoovers. *http://www.hoovers.com/*.

Executive Order also requires agencies to have a process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735).

DOE has examined this action and has determined that it will not pre-empt State law. This action impacts energy efficiency requirements for manufacturers of manufactured homes. Accordingly, no further action is required by Executive Order 13132.

G. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard, and promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine either that those standards are met or it is unreasonable to meet one or more of them. DOE has completed the required review and preliminarily has determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each federal agency to assess the effects of federal regulatory actions on state, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For an amended regulatory action likely to result in a rule that may cause the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. *See* 2 U.S.C. 1532(a), (b). The UMRA also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and Tribal governments on a "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. *See* 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel.*

This proposed rule does not contain a federal intergovernmental or private sector mandate, as those terms are defined in UMRA.

I. Family and General Government Appropriations Act

Section 654 of the Family and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has preliminarily concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Treasury and General Government Appropriations Act

Section 515 of the Treasury and General Government Appropriations Act of 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and preliminarily has concluded that it is consistent with applicable policies in those guidelines.

L. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule or regulation, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE preliminarily has concluded that this regulatory action, which sets forth energy conservation standards for manufactured homes, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed rule.

M. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (15 U.S.C. 788). Section 32 provides in part that, where a proposed rule contains or involves use of commercial standards, the rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates testing methods contained in the following commercial standards: The ACCA "Manual J—Residential Load Calculation (8th Edition)" (ACCA Manual J); the ACCA "Manual S—Residential Equipment Selection (2nd Edition)" (ACCA Manual S); and the PNNL "Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes" (Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes).

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act of 1974, as amended. DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission before prescribing a final rule concerning the impact on competition of requiring manufacturers to use the methods contained in these standards to test various components of manufactured homes.

N. Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard published by ACCA, titled "*Manual J—Residential Load Calculation (8th Edition).*" ACCA Manual J is an industry accepted standard for calculating the heating and cooling load associated with a building. DOE proposes requiring building heating and cooling loads to be calculated (for purposes of equipment sizing) in accordance with ACCA Manual J. ACCA Manual J is readily available on ACCA's Web site at *http://www.acca.org/.*

DOE also proposes to incorporate by reference the test standard published by ACCA, titled "*Manual S—Residential Equipment Selection (2nd Edition).*" ACCA Manual S is an industry accepted standard for calculating the appropriate heating and cooling equipment size for a building. DOE proposes requiring building heating and cooling equipment to be sized in accordance with ACCA Manual S. ACCA Manual S is readily available on ACCA's Web site at *http://www.acca.org/.*

DOE also proposes to incorporate by reference the test standard titled "*Overall U-Values and Heating/Cooling Loads—Manufactured Homes*" *written by* Conner C.C., Taylor, Z.T. of Pacific Northwest Laboratory. This test standard (often referred to as the Battelle Method) is an industry accepted method for calculating the overall thermal transmittance of a manufactured home. DOE proposes requiring manufactured housing manufacturers to calculate the overall thermal transmittance of a manufactured home in accordance with this test standard. This test standard is readily available on the U.S. Department of Housing and Urban Development's Web site at *http://www.huduser.org/portal/publications/manufhsg/uvalue.html.*

VI. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by U.S. mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives also may ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the DOCKET section at the beginning of this proposed rulemaking. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

1. Submitting Comments via *Regulations.gov*

The *regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

2. Submitting Comments via Email, Hand Delivery, or Mail

Comments and documents submitted via email, hand delivery, or mail also will be posted to *regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign Form Letters

Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Relationship With the HUD Code

Potential inconsistencies or conflicts between the proposed rule and the HUD Code, as discussed in detail in section II.B.1 of this document.

2. Scope and Effective Date

The scope and effective date of the proposed rule, as discussed in section III.B.1.a) of the document. DOE requests comment on whether a one-year compliance period would be sufficient for manufacturers to transition their designs, materials, and factory operations and processes in order to comply with the finalized DOE energy conservation standards and for DOE to develop and implement regulations to enforce its standards. DOE also requests comments on what additional lead time should be allowed if it elects to use HUD's existing enforcement system, which would require HUD to adopt the energy standards resulting from this rulemaking. The agency also requests comment on whether there are any particular timing considerations that the agency should consider due to manufacturers choosing to comply with either the prescriptive or thermal envelope compliance paths.

3. Definitions

Proposed additions, exclusions, modifications, and potential inconsistencies among the definitions proposed under this rule, the HUD Code, and the 2015 IECC, as discussed in section III.B.1.b) of this document.

4. Air Barrier

Potential clarification on the meaning of the term "air barrier," as discussed in section III.B.1.b) of this document.

5. Tubular Daylighting Devices

Whether to include tubular daylighting devices in the definition of the term "fenestration," as discussed in section III.B.1.b) of this document.

6. Climate Zones

The proposal to establish four climate zones and the specific categorization of states and counties included in each climate zone, as discussed in section III.B.2.a) of this **SUPPLEMENTARY INFORMATION** and chapter 4 of the TSD. DOE also requests comment on the proposed use of four climate zones relative to adopting the three HUD climate zones and whether there are any potential impacts on manufacturing costs, compliance costs, or other impacts, in particular in Arizona, Texas, Louisiana, Mississippi, Alabama, and

Georgia, where the agency has proposed two different energy efficiency standards within the same state.

7. Home Size

The proposal to establish separate requirements for single- and multi-section manufactured homes, as discussed in section III.B.2.a) of this document.

8. Paths for Compliance With the Building Thermal Envelope Standards

The proposal to establish prescriptive and performance options for achieving compliance with the proposed building thermal envelope requirements, the requirements of each option, and their equivalency in terms of overall thermal performance, as discussed in section III.B.2.b) of this **SUPPLEMENTARY INFORMATION** and chapter 6 of the TSD.

9. Insulated Siding

The proposal to include a requirement similar to section R402.1.3 of the 2015 IECC while excluding the insulated siding specification, as discussed in section III.B.2.b) of this document.

10. U-Factor Alternatives

11. The proposed *U*-factor alternatives and their equivalency with the prescriptive *R*-value requirements for ceiling, wall, and floor insulation, as discussed in section III.B.2.b) of this document.

12. Calculation of Average SHGC

The proposal to include an area-weighted average calculation of SHGC for compliance with § 460.102(c), as discussed in section III.B.2.b) of this document.

13. Insulation Installation Requirements for Floors

Whether the insulation installation requirements in § 460.103, including installation of insulation in floors, may be readily implemented by the manufactured housing industry, as discussed in section III.B.2.c) of this document.

14. Design Criteria for Envelope Sealing

The effectiveness of the prescriptive building thermal envelope sealing requirements, as discussed in section III.B.2.d) of this **SUPPLEMENTARY INFORMATION**.

15. Impact of Envelope Sealing on Indoor Air Quality

The potential impacts associated with the reduction in levels of natural air infiltration (through sealing leaks in the building thermal envelope), if any, relative to the minimum requirements of the HUD Code on reduced indoor air quality, the importance of natural air infiltration for whole-house ventilation strategies in manufactured housing, the relationship between the proposed standards and the mechanical ventilation requirements under the HUD Code, the basis by which the ICC determines a whole-house ventilation strategy is safe, and the minimum total air flow (in ACH units) through a manufactured home that is required to adequately protect public health and safety, as discussed in section V.E of this document.

16. Duct Sealing

The proposed duct sealing and duct leakage requirements, as discussed in section III.B.3.a) of this document.

17. Thermostats and Controls

The proposed requirements for thermostats and controls, and any potential inconsistencies with the HUD Code, as discussed in III.B.3.b) of this document.

18. Demand Recirculation Systems

The initial decision not to propose requirements related to demand recirculation systems in this rule, as discussed in section III.B.3.c) of this document.

19. Drain Water Heat Recovery Units

The initial decision not to propose requirements related to drain water heat recovery units, as discussed in section III.B.3.c) of this document.

20. Equipment Sizing

The proposed requirements for equipment sizing and the applicability of ACCA Manuals S and J, as discussed in section III.B.3.e) of this document.

21. Lighting Equipment Standards

The initial determination not to propose lighting equipment standards specific to manufactured housing, as discussed in section III.C.6 of this document.

22. Simulated Performance Alternative

The exclusion of a simulated performance alternative as a pathway to compliance, as discussed in section III.C.7 of this document.

23. Waivers and Exception Relief

A process for authorizing manufacturers to obtain waivers or exception relief from the energy conservation requirements, as discussed in section II.B.3 of this document.

24. Compliance and Enforcement Program Options

The potential options DOE may consider in a future rulemaking regarding compliance and enforcement, as discussed in section III.E of this document.

25. Compliance and Enforcement Program Costs and Time Requirements

The estimated costs (only direct compliance and enforcement costs, not engineering costs for redesign) and time (design compliance review, inspection frequency and duration, administrative procedures) associated with the potential compliance and enforcement options, as discussed in section III.E of this document.

26. Increased Costs of Components

The assumptions underlying DOE's analyses associated with the increased costs of manufactured home components, as discussed in section IV.A of this document.

27. Lifecycle Cost Analysis

The methodology and initial findings of the lifecycle cost analysis, as discussed in IV.A of this **SUPPLEMENTARY INFORMATION** and chapter 8 of the TSD.

28. Affordability

The affordability of the proposed rule, with respect to the increased purchase cost, reduced operating costs (energy bills), and total lifecycle cost, as discussed in IV.A of this **SUPPLEMENTARY INFORMATION** and chapter 8 of the TSD.

29. Manufacturer Impacts Analysis—Markups

Whether manufacturer and retailer mark-ups for the base-case and standards case other than the primary estimate should be considered. (*e.g.*, a combined mark-up of 2.30 has historically been used in the past to assess combined manufacturer and retailer mark-ups to determine potential first cost impacts on consumers), as discussed in IV.B of this **SUPPLEMENTARY INFORMATION** and chapter 12 of the TSD.

30. Shipments Analysis

The methodology and initial findings of the shipments analysis, as discussed in section IV.B of this **SUPPLEMENTARY INFORMATION** and chapter 10 of the TSD.

31. Shipment Growth Rate

The estimate of the future growth rate of manufactured home shipments, as discussed in section IV.C of this **SUPPLEMENTARY INFORMATION** and chapter 10 and appendix 11A of the TSD.

32. Price Elasticity

The estimate of the price elasticity of demand of manufactured homes, as discussed in section IV.C of this SUPPLEMENTARY INFORMATION and chapter 10 and appendix 11A of the TSD.

33. National Impacts Analysis

The methodology and initial findings of the national impacts analysis, as discussed in section IV.C of this SUPPLEMENTARY INFORMATION and chapter 11 of the TSD.

34. Emissions Analysis

The methodology and results of the emissions analysis and the proper monetization of emissions, as discussed in section IV.D of this SUPPLEMENTARY INFORMATION and chapter 13 of the TSD.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 460

Administrative practice and procedure, Buildings and facilities, Energy conservation, Housing standards, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on May 20, 2016.

David Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to add part 460 of title 10 of the Code of Federal Regulations as set forth below:

PART 460—ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOMES

Subpart A—General

Sec.
460.1 Scope.
460.2 Definitions.
460.3 Materials incorporated by reference.

Subpart B—Building Thermal Envelope

460.101 Climate zones.
460.102 Building thermal envelope requirements.
460.103 Installation of insulation.
460.104 Building thermal envelope air leakage.

Subpart C—HVAC, Service Water Heating, and Equipment Sizing

460.201 Duct systems.
460.202 Thermostats and controls.
460.203 Service water heating.
460.204 Mechanical ventilation fan efficacy.
460.205 Equipment sizing.

Authority: 42 U.S.C. 17071; 42 U.S.C. 7101 *et seq.*

Subpart A—General

§ 460.1 Scope.

This subpart establishes energy conservation standards for manufactured homes. A manufactured home that is manufactured on or after the date one year following issuance of the final rule must comply with all applicable requirements of this part.

§ 460.2 Definitions.

As used in this part—

Accessible means admitting close approach as a result of not being guarded by locked doors, elevation, or other effective means.

Air barrier means material or materials assembled and joined together to provide a barrier to air leakage through the building thermal envelope.

Automatic means self-acting or operating by its own mechanism when actuated by some impersonal influence.

Building thermal envelope means exterior walls, floor, ceiling or roof, and any other building elements that enclose conditioned space or provide a boundary between conditioned space and unconditioned space.

Ceiling means an assembly that supports and forms the overhead interior surface of a building or room that covers its upper limit and is horizontal or tilted at an angle less than 60 degrees (1.05 rad) from horizontal.

Circulating hot water system means a water distribution system in which one or more pumps are operated in the service hot water piping to circulate heated water from the water heating equipment to fixtures and back to the water heating equipment.

Climate zone means a geographical region identified in § 460.101.

Conditioned space means an area, room, or space that is enclosed within the building thermal envelope and that is directly heated or cooled, or an area, room, or space that has a fixed opening directly into an adjacent area, room, or space that is enclosed within the building thermal envelope and that is directly heated or cooled.

Continuous air barrier means a combination of materials and assemblies that restrict or prevent the passage of air from conditioned space to unconditioned space.

Door means an operable barrier used to block or allow access to an entrance of a manufactured home.

Dropped ceiling means a secondary nonstructural ceiling, hung below the main ceiling.

Dropped soffit means a secondary nonstructural ceiling that is hung below the ceiling and that covers only a portion of the ceiling.

Duct means a tube or conduit, except an air passage within a self-contained system, utilized for conveying air to or from heating, cooling, or ventilating equipment.

Duct system means a continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans, and accessory air-handling equipment and appliances.

Eave means the edge of the roof that overhangs the face of a wall and normally projects beyond the side of the manufactured home.

Equipment includes material, appliances, devices, fixtures, fittings, or accessories both in the construction of, and in the plumbing, heating, cooling, and electrical systems of, a manufactured home.

Exterior wall means a wall that separates conditioned space from unconditioned space.

Fenestration means vertical fenestration and skylights.

Floor means a horizontal assembly that supports and forms the lower interior surface of a building or room upon which occupants can walk.

Glazed or glazing means an infill material, including glass, plastic, or other transparent or translucent material, used in fenestration.

Infiltration means the uncontrolled air leakage into a manufactured home caused by the pressure effects of wind and/or the effect of differences in the indoor and outdoor air density.

Insulation means material deemed to be insulation under 16 CFR 460.2.

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure. This term includes all structures that meet the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to 24 CFR 3282.13 and complies with the construction and safety standards set forth in 24 CFR part 3280. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions, measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of the U.S. Department of Housing and Urban Development Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

Manufacturer means any person engaged in the factory construction or assembly of a manufactured home, including any person engaged in importing manufactured homes for resale.

Manual means capable of being operated by personal intervention.

R-value (thermal resistance) means the inverse of the time rate of heat flow through a body from one of its bounding surfaces to the other surface for a unit temperature difference between the two surfaces, under steady state conditions, per unit area (h · ft^2 · °F/Btu).

Rough opening means an opening in the wall or roof, sized for installation of fenestration.

Service hot water means supply of hot water for purposes other than comfort heating.

Skylight means glass or other transparent or translucent glazing material, including framing materials, installed at an angle less than 60 degrees (1.05 rad) from horizontal.

Solar heat gain coefficient (SHGC) means the ratio of the solar heat gain entering a space through a fenestration assembly to the incident solar radiation. Solar heat gain includes directly transmitted solar heat and absorbed solar radiation that is then reradiated, conducted, or convected into the space.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa.

Thermostat means an automatic control device used to maintain temperature at a fixed or adjustable set point.

U-factor (thermal transmittance) means the coefficient of heat transmission (air to air) through a building component or assembly, equal to the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films (Btu/h · ft^2 · °F).

U_o *(overall thermal transmittance)* means the coefficient of heat transmission (air to air) through the building thermal envelope, equal to the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films (Btu/ h · ft^2 ·; °F).

Ventilation means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

Vertical fenestration means windows (fixed or moveable), opaque doors, glazed doors, glazed block and combination opaque and glazed doors composed of glass or other transparent or translucent glazing materials and installed at a slope of greater than or equal to 60 degrees (1.05 rad) from horizontal.

Wall means an assembly that is vertical or tilted at an angle equal to greater than 60 degrees (1.05 rad) from horizontal that encloses or divides an area of a building or room.

Whole-house mechanical ventilation system means an exhaust system, supply system, or combination thereof that is designed to mechanically exchange indoor air with outdoor air when operating continuously or through a programmed intermittent schedule.

Window means glass or other transparent or translucent glazing material, including framing materials, installed at an angle greater than 60 degrees (1.05 rad) from horizontal.

Zone means a space or group of spaces within a manufactured home with heating or cooling requirements that are sufficiently similar so that desired conditions can be maintained using a single controlling device.

§ 460.3 Materials incorporated by reference.

(a) *General.* We incorporate by reference the following standards into part 460. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the Federal Register. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. This material also is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, 202–586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Standards can be obtained from the sources listed.

(b) *ACCA.* Air Conditioning Contractors of America, Inc., 2800 S. Shirlington Road, Suite 300, Arlington, VA 22206, 703–575–4477, *http://www.acca.org/*.

(1) *Manual J—Residential Load Calculation (8th Edition).* IBR approved for § 460.205 of subpart C.

(2) *Manual S—Residential Equipment Selection (2nd Edition).* IBR approved for § 460.205 of subpart C.

(c) *HUD.* U.S. Department of Housing and Urban Development, *http://www.huduser.org/portal/publications/manufhsg/uvalue.html*, 800–245–2691.

(1) *Overall U-Values and Heating/Cooling Loads—Manufactured Homes.* Conner C.C., Taylor, Z.T., Pacific Northwest Laboratory, published February 1, 1992, IBR approved for § 460.102 of subpart B.

(2) Reserved.

Subpart B—Building Thermal Envelope

§ 460.101 Climate zones.

Manufactured homes must comply with the requirements applicable to one or more of the climate zones set forth in Figure 460.101 and Tables 460.101–1 and 460.101–2 of this section.

Figure 460.101 Climate Zones

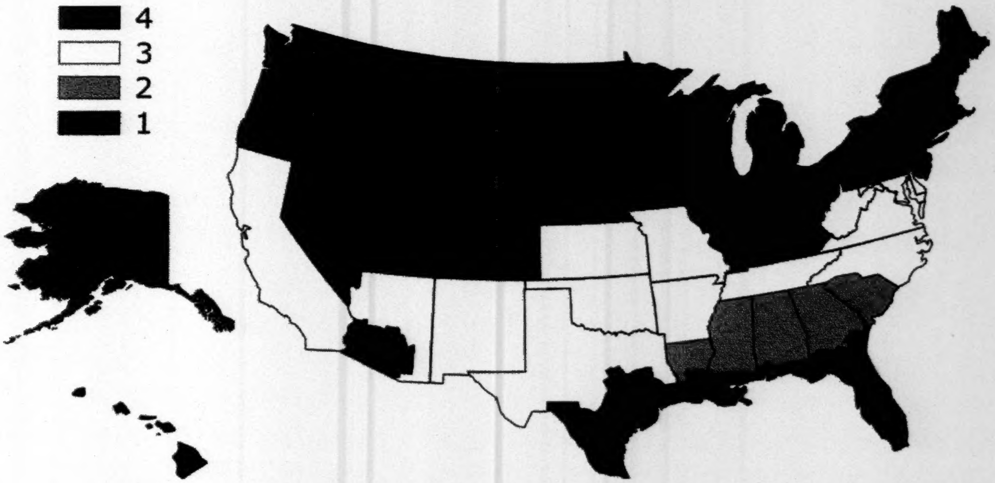

TABLE 460.101–1—U.S. STATES AND TERRITORIES WITH ONE CLIMATE ZONE

Zone 1	Zone 2	Zone 3	Zone 4
Florida	South Carolina	Arkansas	Alaska.
Hawaii		Delaware	Colorado.
American Samoa		District of Columbia	Connecticut.
Guam		Kansas	Idaho.
The Commonwealth of Puerto Rico		Kentucky	Illinois.
U.S. Virgin Islands		Maryland	Indiana.
		Missouri	Iowa.
		New Mexico	Maine.
		North Carolina	Massachusetts.
		Oklahoma	Michigan.
		Tennessee	Minnesota.
		Virginia	Montana.
		West Virginia	Nebraska.
			Nevada.
			New Hampshire.
			New Jersey.
			New York.
			North Dakota.
			Ohio.
			Oregon.
			Pennsylvania.
			Rhode Island.
			South Dakota.
			Utah.
			Vermont.
			Washington.
			Wisconsin.
			Wyoming.

TABLE 460.101–2—U.S. STATES WITH MORE THAN ONE CLIMATE ZONE

State	Zone	Counties	Counties	Counties	Counties	Counties
Alabama	1	Baldwin	Mobile.			
	2	Autauga	Barbour	Bibb	Blount	Bullock.
		Butler	Calhoun	Chambers	Cherokee	Chilton.
		Choctaw	Clarke	Clay	Cleburne	Coffee.
		Colbert	Conecuh	Coosa	Covington	Crenshaw.
		Cullman	Dale	Dallas	DeKalb	Elmore.
		Escambia	Etowah	Fayette	Franklin	Geneva.
		Greene	Hale	Henry	Houston	Jackson.
		Jefferson	Lamar	Lauderdale	Lawrence	Lee.
		Limestone	Lowndes	Macon	Madison	Marengo.
		Marion	Marshall	Monroe	Montgomery	Morgan.
		Perry	Pickens	Pike	Randolph	Russell.

TABLE 460.101–2—U.S. STATES WITH MORE THAN ONE CLIMATE ZONE—Continued

State	Zone	Counties	Counties	Counties	Counties	Counties
		St. Clair	Shelby	Sumter	Talladega	Tallapoosa.
		Tuscaloosa	Walker	Washington	Wilcox	Winston.
Arizona	1	La Paz	Maricopa	Pima	Pinal	Yuma.
	3	Apache	Cochise	Coconino	Graham	Greenlee.
		Mohave	Navajo	Santa Cruz	Yavapai.	
Georgia	1	Appling	Atkinson	Bacon	Baker	Berrien.
		Brantley	Brooks	Bryan	Camden	Charlton.
		Chatham	Clinch	Colquitt	Cook	Decatur.
		Echols	Effingham	Evans	Glynn	Grady.
		Jeff Davis	Lanier	Liberty	Long	Lowndes.
		McIntosh	Miller	Mitchell	Pierce	Seminole.
		Tattnall	Thomas	Toombs	Ware	Wayne.
	2	Baldwin	Banks	Barrow	Bartow	Ben Hill.
		Bibb	Bleckley	Bulloch	Burke	Butts.
		Calhoun	Candler	Carroll	Catoosa	Chattahoochee.
		Chattooga	Cherokee	Clarke	Clay	Clayton.
		Cobb	Coffee	Columbia	Coweta	Crawford.
		Crisp	Dade	Dawson	DeKalb	Dodge.
		Dooly	Dougherty	Douglas	Early	Elbert.
		Emanuel	Fannin	Fayette	Floyd	Forsyth.
		Franklin	Fulton	Gilmer	Glascock	Gordon.
		Greene	Gwinnett	Habersham	Hall	Hancock.
		Haralson	Harris	Hart	Heard	Henry.
		Houston	Irwin	Jackson	Jasper	Jefferson.
		Jenkins	Johnson	Jones	Lamar	Laurens.
		Lee	Lincoln	Lumpkin	McDuffie	Macon.
		Madison	Marion	Meriwether	Monroe	Montgomery.
		Morgan	Murray	Muscogee	Newton	Oconee.
		Oglethorpe	Paulding	Peach	Pickens	Pike.
		Polk	Pulaski	Putnam	Quitman	Rabun.
		Randolph	Richmond	Rockdale	Schley	Screven.
		Spalding	Stephens	Stewart	Sumter	Talbot.
		Taliaferro	Taylor	Telfair	Terrell	Tift.
		Towns	Treutlen	Troup	Turner	Twiggs.
		Union	Upson	Walker	Walton	Warren.
		Washington	Webster	Wheeler	White	Whitfield.
		Wilcox	Wilkes	Wilkinson	Worth.	
Louisiana	1	Acadia	Allen	Ascension	Assumption	Avoyelles.
		Beauregard	Calcasieu	Cameron	East Baton Rouge	East Feliciana.
		Evangeline	Iberia	Iberville	Jefferson	Jefferson Davis.
		Lafayette	Lafourche	Livingston	Orleans	Plaquemines.
		Pointe Coupee	Rapides	St. Bernard	St. Charles	St. Helena.
		St. James	St. John the Baptist	St. Landry	St. Martin	St. Mary.
		St. Tammany	Tangipahoa	Terrebonne	Vermilion	Washington.
		West Baton Rouge	West Feliciana.			
	2	Bienville	Bossier	Caddo	Caldwell	Catahoula.
		Claiborne	Concordia	De Soto	East Carroll	Franklin.
		Grant	Jackson	LaSalle	Lincoln	Madison.
		Morehouse	Natchitoches	Ouachita	Red River	Richland.
		Sabine	Tensas	Union	Vernon	Webster.
		West Carroll	Winn.			
Mississippi	1	Hancock	Harrison	Jackson	Pearl River	Stone.
	2	Adams	Alcorn	Amite	Attala	Benton.
		Bolivar	Calhoun	Carroll	Chickasaw	Choctaw.
		Claiborne	Clarke	Clay	Coahoma	Copiah.
		Covington	DeSoto	Forrest	Franklin	George.
		Greene	Grenada	Hinds	Holmes	Humphreys.
		Issaquena	Itawamba	Jasper	Jefferson	Jefferson Davis.
		Jones	Kemper	Lafayette	Lamar	Lauderdale.
		Lawrence	Leake	Lee	Leflore	Lincoln.
		Lowndes	Madison	Marion	Marshall	Monroe.
		Montgomery	Neshoba	Newton	Noxubee	Oktibbeha.
		Panola	Perry	Pike	Pontotoc	Prentiss.
		Quitman	Rankin	Scott	Sharkey	Simpson.
		Smith	Sunflower	Tallahatchie	Tate	Tippah.
		Tishomingo	Tunica	Union	Walthall	Warren.
		Washington	Wayne	Webster	Wilkinson	Winston.
		Yalobusha	Yazoo.			
Texas	1	Anderson	Angelina	Aransas	Atascosa	Austin.
		Bandera	Bastrop	Bee	Bell	Bexar.
		Bosque	Brazoria	Brazos	Brooks	Burleson.
		Caldwell	Calhoun	Cameron	Chambers	Colorado.

TABLE 460.101–2—U.S. STATES WITH MORE THAN ONE CLIMATE ZONE—Continued

State	Zone	Counties	Counties	Counties	Counties	Counties
		Comal	Coryell	DeWitt	Dimmit	Duval.
		Edwards	Falls	Fayette	Fort Bend	Freestone.
		Frio	Galveston	Goliad	Gonzales	Grimes.
		Guadalupe	Hardin	Harris	Hays	Hidalgo.
		Hill	Houston	Jackson	Jasper	Jefferson.
		Jim Hogg	Jim Wells	Karnes	Kenedy	Kinney.
		Kleberg	La Salle	Lavaca	Lee	Leon.
		Liberty	Limestone	Live Oak	Madison	Matagorda.
		Maverick	McLennan	McMullen	Medina	Milam.
		Montgomery	Newton	Nueces	Orange	Polk.
		Real	Refugio	Robertson	San Jacinto	San Patricio.
		Starr	Travis	Trinity	Tyler	Uvalde.
		Val Verde	Victoria	Walker	Waller	Washington.
		Webb	Wharton	Willacy	Williamson	Wilson.
		Zapata	Zavala.			
	3	Andrews	Archer	Armstrong	Bailey	Baylor.
		Blanco	Borden	Bowie	Brewster	Briscoe.
		Brown	Burnet	Callahan	Camp	Carson.
		Cass	Castro	Cherokee	Childress	Clay.
		Cochran	Coke	Coleman	Collin	Collingsworth.
		Comanche	Concho	Cooke	Cottle	Crane.
		Crockett	Crosby	Culberson	Dallam	Dallas.
		Dawson	Deaf Smith	Delta	Denton	Dickens.
		Donley	Eastland	Ector	Ellis	El Paso.
		Erath	Fannin	Fisher	Floyd	Foard.
		Franklin	Gaines	Garza	Gillespie	Glasscock.
		Gray	Grayson	Gregg	Hale	Hall.
		Hamilton	Hansford	Hardeman	Harrison	Hartley.
		Haskell	Hemphill	Henderson	Hockley	Hood.
		Hopkins	Howard	Hudspeth	Hunt	Hutchinson.
		Irion	Jack	Jeff Davis	Johnson	Jones.
		Kaufman	Kendall	Kent	Kerr	Kimble.
		King	Knox	Lamar	Lamb	Lampasas.
		Lipscomb	Llano	Loving	Lubbock	Lynn.
		McCulloch	Marion	Martin	Mason	Menard.
		Midland	Mills	Mitchell	Montague	Moore
		Morris	Motley	Nacogdoches	Navarro	Nolan.
		Ochiltree	Oldham	Palo Pinto	Panola	Parker.
		Parmer	Pecos	Potter	Presidio	Rains.
		Randall	Reagan	Red River	Reeves	Roberts.
		Rockwall	Runnels	Rusk	Sabine	San Augustine.
		San Saba	Schleicher	Scurry	Shackelford	Shelby.
		Sherman	Smith	Somervell	Stephens	Sterling.
		Stonewall	Sutton	Swisher	Tarrant	Taylor.
		Terrell	Terry	Throckmorton	Titus	Tom Green.
		Upshur	Upton	Van Zandt	Ward	Wheeler.
		Wichita	Wilbarger	Winkler	Wise	Wood.
		Yoakum	Young.			

§ 460.102 Building thermal envelope requirements.

(a) *Compliance options.* The building thermal envelope of a manufactured home must meet either the prescriptive requirements of paragraph (b) of this section or the performance requirements of paragraph (c) of this section.

(b) *Prescriptive requirements.* (1) The building thermal envelope must meet the minimum *R*-value, and the maximum *U*-factor and SHGC, requirements set forth in Table 460.102–1.

TABLE 460.102–1—BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Ceiling insulation *R*-value	Wall insulation *R*-value	Floor insulation *R*-value	Window *U*-factor	Skylight *U*-factor	Door *U*-factor	Glazed fenestration SHGC
1	30	13	13	0.35	0.75	0.40	0.25
2	30	13	13	0.35	0.75	0.40	0.33
3	30	21	19	0.35	0.55	0.40	0.33
4	38	21	30	0.32	0.55	0.40	Not Applicable

(2) For the purpose of compliance with the ceiling insulation *R*-value requirement of paragraph (b)(1) of this section, the truss heel height must be a minimum of 5.5 inches at the outside face of each exterior wall.

(3) Ceiling insulation must have either a uniform thickness or a uniform density.

(4) A combination of *R*-21 batt insulation and *R*-14 blanket insulation may be used for the purpose of compliance with the floor insulation *R*-value requirement of § 460.102(b)(1) for climate zone 4.

(5) An individual skylight that has an SHGC that is less than or equal to 0.30 is not subject to the glazed fenestration SHGC requirements established in Table 460.102–1.

(6) *U*-factor alternatives to *R*-value requirements. Compliance with paragraph (b)(1) of this section may be determined using the maximum *U*-factor values set forth in Table 460.102–2, which reflect the thermal transmittance of the component, excluding fenestration, and not just the insulation of that component, as an alternative to the minimum *R*-value requirements set forth in Table 460.102–1.

(7) The total area of glazed fenestration must be no greater than 12 percent of the area of the floor.

TABLE 460.102–2—*U*-FACTOR ALTERNATIVES TO *R*-VALUE REQUIREMENTS

Climate zone	Ceiling *U*-factor	Wall *U*-factor	Floor *U*-factor
1	0.0446	0.0943	0.0776
2	0.0446	0.0943	0.0776
3	0.0446	0.0628	0.0560
4	0.0377	0.0628	0.0322

(c) *Performance requirements.* (1) The building thermal envelope must have a U_o that is less than or equal to the value specified in Table 460.102–3.

TABLE 460.102–3—BUILDING THERMAL ENVELOPE PERFORMANCE REQUIREMENTS

Climate zone	Single-section U_o	Multi-section U_o
1	0.087	0.084
2	0.087	0.084
3	0.070	0.068
4	0.059	0.056

(2) Area-weighted average vertical fenestration *U*-factor must not exceed 0.48 in climate zone 3 or 0.40 in climate zone 4.

(3) Area-weighted average skylight *U*-factor must not exceed 0.75 in climate zone 3 and climate zone 4.

(4) Windows, skylights and doors containing more than 50 percent glazing by area must satisfy the SHGC requirements established in Table 460.102–1 on the basis of an area-weighted average.

(d) *Determination of compliance with paragraph (b) of this section.*

(1)–(2) [Reserved].

(3) The total *R*-value of a component is the sum of the *R*-values of each layer of insulation that comprise the component.

(4)–(5) [Reserved].

(6) The *U*-factor for certain fenestration products and doors may be determined in accordance with the prescriptive default values set forth in Tables 460.102–4 and 460.102–5.

(7) [Reserved].

(8) The SHGC of certain glazed fenestration products may be determined in accordance with the prescriptive glazed fenestration default values set forth in Table 460.102–6.

(e) *Determination of compliance with § 460.102(c).* (1) U_o must be determined in accordance with Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes (incorporated by reference; see § 460.3) with the following exceptions:

(i)–(ii) [Reserved].

(iii) The *U*-factor for certain fenestration products and doors may be determined in accordance with the prescriptive default values set forth in Tables 460.102–4 and 460.102–5 of this section.

(2) [Reserved].

(3) The SHGC of certain glazed fenestration products may be determined in accordance with the prescriptive glazed fenestration default values set forth in Table 460.102–6.

TABLE 460.102–4—DEFAULT GLAZED FENESTRATION *U*-FACTOR VALUES

Frame type	Window *U*-factor	Window *U*-factor	Skylight *U*-factor	
			Single pane	Double pane
Metal	1.20	0.80	2.00	1.30
Metal with Thermal Break	1.10	0.65	1.90	1.10
Nonmetal or Metal Clad	0.95	0.55	1.75	1.05
Glazed Block	0.60			

TABLE 460.102–5—DEFAULT DOOR *U*-FACTOR VALUES

Door type	*U*-factor
Uninsulated Metal	1.20
Insulated Metal	0.60
Wood	0.50
Insulated, nonmetal edge, maximum 45 percent glazing, any glazing double pane	0.35

TABLE 460.102–6—DEFAULT GLAZED FENESTRATION SHGC VALUES

	Single pane		Double pane		Glazed block
	Clear	Tinted	Clear	Tinted	
SHGC	0.8	0.7	0.7	0.6	0.6

§ 460.103 Installation of insulation.

Insulating materials must be installed according to the insulation manufacturer's installation instructions and the requirements set forth in Table 460.103.

TABLE 460.103—INSTALLATION OF INSULATION

Component	Installation requirements
General	Air-permeable insulation must not be used as a material to establish the air barrier.
Access hatches, panels, and doors	Access hatches, panels, and doors between conditioned space and unconditioned space must be insulated to a level equivalent to the insulation of the surrounding surface, must provide access to all equipment that prevents damaging or compressing the insulation, and must provide a wood-framed or equivalent baffle or retainer when loose fill insulation is installed within a ceiling assembly to retain the insulation both on the access hatch, panel, or door and within the building thermal envelope.
Baffles	Baffles must be constructed using a solid material, maintain an opening equal or greater than the size of the vents, and extend over the top of the attic insulation.
Ceiling or attic	The insulation in any dropped ceiling or dropped soffit must be aligned with the air barrier.
Eave vents	Air-permeable insulations in vented attics within the building thermal envelope must be installed adjacent to eave vents.
Floors	Floor insulation must be installed to maintain permanent contact with the underside of the rough floor decking over which the finished floor, flooring material, or carpet is laid, except where air ducts directly contact the underside of the rough floor decking.
Narrow cavities	Batts in narrow cavities must be cut to fit or narrow cavities must be filled by insulation that upon installation readily conforms to the available cavity space.
Rim joists	Rim joists must be insulated.
Shower or tub adjacent to exterior wall	Exterior walls adjacent to showers and tubs must be insulated.
Walls	Air permeable exterior building thermal envelope insulation for framed walls must completely fill the cavity, including within stud bays caused by blocking lay flats or headers.

§ 460.104 Building thermal envelope air leakage.

Manufactured homes must be sealed against air leakage at all joints, seams, and penetrations associated with the building thermal envelope in accordance with the component manufacturer's installation instructions and the requirements set forth in Table 460.104. Sealing methods between dissimilar materials must allow for differential expansion and contraction and must establish a continuous air barrier upon installation of all opaque components of the building thermal envelope. All gaps and penetrations in the ceiling, floor, and exterior walls, including ducts, flue shafts, plumbing, piping, electrical wiring, utility penetrations, bathroom and kitchen exhaust fans, recessed lighting fixtures adjacent to unconditioned space, and light tubes adjacent to unconditioned space, must be sealed with caulk, foam, gasket or other suitable material.

TABLE 460.104—AIR BARRIER INSTALLATION CRITERIA

Component	Air barrier criteria
Ceiling or attic	The air barrier in any dropped ceiling or dropped soffit must be aligned with the insulation and any gaps in the air barrier must be sealed with caulk, foam, gasket, or other suitable material. Access hatches, panels, and doors, drop down stairs, or knee wall doors to unconditioned attic spaces must be weatherstripped or equipped with a gasket to produce a continuous air barrier.
Duct system register boots	Duct system register boots that penetrate the building thermal envelope or the air barrier must be sealed to the air barrier or the interior finish materials with caulk, foam, gasket, or other suitable material.
Electrical box or phone box on exterior walls.	The air barrier must be installed behind electrical or communication boxes or the air barrier must be sealed around the box penetration with caulk, foam, gasket, or other suitable material.
Floors	The air barrier must be installed at any exposed edge of insulation. The bottom board may serve as the air barrier.
Mating line surfaces	Mating line surfaces must be equipped with a continuous and durable gasket.
Recessed lighting	Recessed light fixtures installed in the building thermal envelope must be sealed to the drywall with caulk, foam, gasket, or other suitable material.
Rim joists	The air barrier must enclose the rim joists.
Shower or tub adjacent to exterior wall	The air barrier must separate showers and tubs from exterior walls.
Walls	The junction of the top plate and the ceiling, and the junction of the bottom plate and the floor, along exterior walls must be sealed with caulk, foam, gasket, or other suitable material.
Windows, skylights, and exterior doors	The rough openings around windows, exterior doors, and skylights must be sealed with caulk or foam.

Subpart C—HVAC, Service Water Heating, and Equipment Sizing

§ 460.201 Duct system.

(a) Each manufactured home must be equipped with a duct system, which may include air handlers and filter boxes, that must be sealed to limit total air leakage to less than or equal to four (4) cubic feet per minute per 100 square feet of conditioned floor area when tested according to paragraph (b) of this section. Building framing cavities must not be used as ducts or plenums.

(b) [Reserved].

§ 460.202 Thermostats and controls.

(a) At least one thermostat must be provided for each separate heating and cooling system installed by the manufacturer.

(b) Programmable thermostat. Any thermostat installed by the manufacturer that controls the heating or cooling system must—

(1) Be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day;

(2) Include the capability to set back or temporarily operate the system to maintain zone temperatures down to 55 °F (13 °C) or up to 85 °F (29 °C); and

(3) Be programmed with a heating temperature set point no higher than 70 °F (21 °C) and a cooling temperature set point no lower than 78 °F (26 °C).

(c) Heat pumps with supplementary electric-resistance heat must be provided with controls that, except during defrost, prevent supplemental heat operation when the heat pump compressor can meet the heating load.

§ 460.203 Service water heating.

(a) Service water heating systems installed by the manufacturer must be installed according to the service water heating manufacturer's installation instructions. Where service water heating systems are installed by the manufacturer, the manufacturer must ensure that any maintenance instructions received from the service water heating system manufacturer are provided with the manufactured home.

(b) Any automatic and manual controls, temperature sensors, pumps associated with service water heating systems must be accessible.

(c) *Heated water circulation systems must—*

(1) Be provided with a circulation pump;

(2) Ensure that the system return pipe is a dedicated return pipe or a cold water supply pipe;

(3) Not include any gravity or thermosyphon circulation systems;

(4) Ensure that controls for circulating heated water circulation pumps start the pump based on the identification of a demand for hot water within the occupancy; and

(5) Ensure that the controls automatically turn off the pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water.

(d) All hot water pipes—

(1) Outside conditioned space must be insulated to a minimum *R*-value of *R*-3; and

(2) From a service water heating system to a distribution manifold must be insulated to a minimum *R*-value of *R*-3.

§ 460.204 Mechanical ventilation fan efficacy.

(a) Whole-house mechanical ventilation system fans must meet the minimum efficacy requirements set forth in Table 460.204.

TABLE 460.204—MECHANICAL VENTILATION SYSTEM FAN EFFICACY

Fan type description	Minimum efficacy (cfm/watt)
Range hoods (all air flow rates)	2.8
In-line fans (all air flow rates)	2.8
Bathroom and utility room fans (10 cfm ≤ air flow rate <90 cfm)	1.4
Bathroom and utility room fans (air flow rate ≥90 cfm)	2.8

(b) Mechanical ventilation fans that are integral to heating, ventilating, and air conditioning equipment must be powered by an electronically commutated motor.

§ 460.205 Equipment sizing.

Sizing of heating and cooling equipment installed by the manufacturer must be determined in accordance with ACCA Manual S (incorporated by reference; see § 460.3) based on building loads calculated in accordance with ACCA Manual J (incorporated by reference; see § 460.3).

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Part III

Securities and Exchange Commission

17 CFR Part 240
Trade Acknowledgment and Verification of Security-Based Swap Transactions; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–78011; File No. S7–03–11]

RIN 3235–AK91

Trade Acknowledgment and Verification of Security-Based Swap Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: In accordance with Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the Securities and Exchange Commission ("Commission") is adopting Rules 15Fi–1 and 15Fi–2 under the Securities Exchange Act of 1934 ("Exchange Act") requiring security-based swap dealers and major security-based swap participants to provide trade acknowledgments and to verify those trade acknowledgments in security-based swap transactions. The Commission also is amending Rule 3a71–6 under the Exchange Act to address the potential availability of substituted compliance in connection with those trade acknowledgment and verification requirements.

DATES: *Effective Date:* August 16, 2016. *Compliance date:* The applicable compliance date is discussed in Section V of this final rule.

FOR FURTHER INFORMATION CONTACT: Paula Jenson, Deputy Chief Counsel; Joanne Rutkowski, Assistant Chief Counsel; or Darren Vieira, Special Counsel, at (202) 551–5550, Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
  A. Trade Acknowledgment and Verification
  B. Cross-Border Application and Availability of Substituted Compliance
II. Discussion of Trade Acknowledgment and Verification Rule
  A. Definitions
  1. Proposed Rule
  2. Comments
  3. Response to Comments and Final Rule
  B. Trade Acknowledgment Requirement
  1. Proposed Rule
  2. Comments
  3. Response to Comments and Final Rule
  C. Time To Provide a Trade Acknowledgment
  1. Proposed Rule
  2. Comments
  3. Response to Comments and Final Rule
  D. Form and Content of Trade Acknowledgments
  1. Proposed Rule
  2. Comments
  3. Response to Comments and Final Rule
  E. Trade Verification
  1. Proposed Rule
  2. Comments
  3. Response to Comments and Final Rule
  F. Exception for Clearing Transactions
  G. Exception for Transactions Executed on a Security-Based Swap Execution Facility or National Securities Exchange or Accepted for Clearing by a Clearing Agency
  1. Exception for Transactions Executed on a Security-Based Swap Execution Facility or National Securities Exchange
  2. Exception for Transactions Accepted for Clearing by a Clearing Agency
  3. Trade Acknowledgment and Verification After Notice That an SBSEF or Exchange Has Not Acknowledged and Verified a Transaction or That a Transaction Has Not Been Accepted for Clearing by a Clearing Agency
  H. Exemption From Rule 10b–10
III. Cross-Border Application of Trade Acknowledgment and Verification Requirements
  A. Proposed Application
  B. Commenter Views
  C. Response to Comments and Final Interpretation
IV. Availability of Substituted Compliance for Trade Acknowledgment and Verification Requirements
  A. Existing Substituted Compliance Rule
  B. Response to Comments and Final Rule
  1. Basis for Substituted Compliance in Connection With the Trade Acknowledgment and Verification Requirements
  2. Comparability Criteria, and Consideration of Related Requirements
V. Effective and Compliance Dates
  A. Trade Acknowledgment and Verification
  B. Substituted Compliance Rule
VI. Paperwork Reduction Act
  A. Introduction
  B. Rule 15Fi–2
  1. Summary of Collection of Information
  2. Proposed Use of Information
  3. Respondents
  4. Total Initial and Annual Reporting and Recordkeeping Burdens
  5. Retention Period of Recordkeeping Requirements
  6. Collection of Information is Mandatory
  7. Confidentiality
  C. Rule 3a71–6
  1. Summary of Collection of Information
  2. Proposed Use of Information
  3. Respondents
  4. Total Initial and Annual Reporting and Recordkeeping Burdens
  5. Collection of Information Is Mandatory
  6. Confidentiality
VII. Economic Analysis
  A. Introduction
  B. Economic Baseline
  1. Available Data on Security-Based Swaps
  2. Current Security-Based Swap Market
  3. Current Estimates of Number of SBS Dealers and Major SBS Participants
  4. Trade Execution
  5. Clearing Activity
  6. Current Trade Confirmation Practices
  a. Joint Regulatory Initiative
  b. CFTC Trade Confirmation Rules
  c. Foreign Trade Confirmation Rules
  C. Benefits, Costs, and Effects on Efficiency, Competition, and Capital Formation
  1. Effects on Efficiency, Competition, and Capital Formation
  a. Broad Market Effects
  b. Substituted Compliance
  2. Costs and Benefits to Registered SBS Entities
  3. Costs and Benefits to Non-Registered Market Participants
  4. Costs and Benefits of the Substituted Compliance Provisions
  5. Costs and Benefits of the Clearing and Security-Based Swap Execution Facility and National Securities Exchange Exceptions
  6. Exemption from Rule 10b–10
  D. Alternatives Considered
  1. Trade Acknowledgment Rules
  a. Approved Third Parties
  b. Time of Acknowledgment
  c. Terms of the Transaction
  2. Clearing Transactions
  3. Certain Transactions on a Security-Based Swap Execution Facility or a National Securities Exchange
  E. Comment and Response to Comment
VIII. Regulatory Flexibility Act Certification
IX. Statutory Basis and Text of Amendments

I. Introduction

A. Trade Acknowledgment and Verification

Section 764 of the Dodd-Frank Act,[1] enacted on July 21, 2010, added Section 15F to the Exchange Act.[2] Among other things, Section 15F requires security-based swap ("SBS") dealers[3] and major SBS participants[4] (together, "SBS Entities") to register with the Commission, and directs the Commission to prescribe rules applicable to SBS Entities.

Section 15F(i)(1) of the Exchange Act provides that registered SBS Entities shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps. Section 15F(i)(2) of the Exchange Act requires the Commission to adopt rules governing documentation standards for SBS Entities. Pursuant to this authority, the Commission published proposed Rule 15Fi–1 for public comment.[5] The proposed rule prescribed standards intended to provide for timely and accurate confirmation of SBS transactions, as discussed more fully below.

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[1] Pub. L. 111–203, 124 Stat. 1376, 1784 (2010).

[2] 15 U.S.C. 78o–8.

[3] *See* Exchange Act Section 3(a)(71)(A) [15 U.S.C. 78c(71)(A)] and Rule 3a71–1 [17 CFR 240.3a71–1]; *see also* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) ("Intermediary Definitions Adopting Release") and Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities; Republication, Exchange Act Release No. 72472 (Jun. 25, 2014), 79 FR 47278 (Aug. 12, 2014) ("Cross-Border Adopting Release").

[4] *See* Exchange Act Section 3(a)(67) [15 U.S.C. 78c(67)] and Rule 3a67–1 [17 CFR 240.3a67–1]; *see also* Intermediary Definitions Adopting Release and Cross-Border Adopting Release.

The Commission proposed Rule 15Fi–1 to promote the efficient operation of the SBS market, and to facilitate market participants' management of their SBS-related risk.[6] The proposed rule was intended to help avoid a recurrence of documentation backlogs that had persisted in the industry prior to the adoption of the Dodd-Frank Act, and to help address concerns expressed by the Government Accountability Office regarding the documentation of credit derivatives.[7] In particular, the proposed rule was intended to reduce the risk a court may have to supply contract terms upon which there was no previous agreement.[8] Furthermore, unconfirmed trades could allow errors to go undetected that might subsequently lead to losses and other problems, such as an SBS Entity's inaccurately measuring and managing its risk exposures.[9] Such operational risks have the potential to contribute to broader market problems.[10]

If an SBS transaction is not reduced to writing, there is no definitive written record of the contract terms to which the counterparties have agreed, which can lead to legal and operational risk for market participants. For this reason, prudent practice requires that, after coming to an agreement on the terms of an SBS transaction, the counterparties document the transaction in a complete and definitive written record so there is certainty about the terms of their agreement in case those terms are later disputed. The Commission understands that market participants generally issue a "trade acknowledgment" (sometimes referred to by market participants as a "draft confirmation" or an "alleged trade") to memorialize the economic and related terms of an SBS transaction, regardless of the means by which the transaction was executed. The Commission also understands that industry best practices incorporate a process by which the counterparties verify that the trade acknowledgment accurately reflects the terms of their trade.[11] This process, through which one counterparty acknowledges an SBS transaction and its counterparty verifies it, is the confirmation process, which results in the issuance of a confirmation that reflects the terms of the contract between the counterparties.[12] This confirmation generally includes any transaction-specific modifications to master agreements between the counterparties that might apply to the transaction, such as the International Swaps and Derivatives Association ("ISDA") Master Agreement and Schedule. A confirmation is thus a written or electronic record of an SBS transaction that has been sent by one counterparty to its counterparty and then manually, electronically, or by some other legally equivalent means, signed (*i.e.*, verified) by the receiving counterparty.

Proposed Rule 15Fi–1 generally would have required that an SBS Entity provide a trade acknowledgment containing certain information memorializing an SBS transaction to its counterparty. If more than one counterparty to the SBS transaction is an SBS Entity, the proposed rule specified which counterparty would be required to provide the trade acknowledgment. The proposed rule also would have required an SBS Entity to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment. In addition, an SBS Entity would have been required to promptly verify the accuracy of, or otherwise dispute with its counterparty, the terms of any trade acknowledgment that it receives. The proposed rule is described more fully below in Section II.

The comment period for proposed Rule 15Fi–1 ended on February 22, 2011. On May 1, 2013, the Commission reopened the comment period for proposed Rule 15Fi–1 and sought comment on, among other things, the relationship of the proposed rule to any parallel requirements of other authorities, including the CFTC and relevant foreign regulatory authorities and, with respect to the CFTC rules, whether the Commission's rules should emphasize consistency with the CFTC rules or be more tailored to the security-based swap market.[13] The Commission received seven comments in total on proposed Rule 15Fi–1.[14] As discussed more fully in Section II below, commenters generally supported the proposed rule but suggested modifications to certain provisions.

After careful consideration of the comments, the Commission is adopting Rules 15Fi–1 and 15Fi–2 (each a "Final Rule") with certain modifications to the proposal as discussed below in Section II. These changes generally are intended to address concerns expressed by some commenters and to bring the rule into greater conformity with the CFTC Rule. The Commission has also modified the proposal to separate the proposed rule into two rules. Final Rule 15Fi–1 contains the definitions, which are re-designated as paragraphs (a) through (i) of Final Rule 15Fi–1. Final Rule 15Fi–2 contains the substantive trade acknowledgment and verification requirements, an exception for clearing transactions, an exception for certain transactions that are executed on a security-based swap execution facility (“SBSEF”) or a national securities exchange or that are accepted for clearing by a clearing agency, and the exemption from Rule 10b–10.

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[5] Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) ("Proposing Release").

[6] *See* Proposing Release, 76 FR at 3861.

[7] *See* Proposing Release, 76 FR at 3860–61, and Section VII.A, *infra*.

[8] *See* Proposing Release, 76 FR at 3860.

[9] U.S. Gov't Accountability Office, GAO–07–716, Confirmation Backlogs Increased Dealers' Operational Risks, but Were Successfully Addressed After Joint Regulatory Action (2007) ("GAO Confirmation Report") at 15.

[10] *Id.*

[11] *See* Part II.E, below, for a discussion of verification.

[12] Confirmations may also be used by an SBS Entity to make certain disclosures, or to disclaim certain obligations, to a counterparty. The Commission has separately adopted rules governing required disclosures by an SBS Entity in connection with business conduct rules for SBS Entities. *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960 (May 13, 2016) ("Business Conduct Adopting Release").

[13] Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps, Exchange Act Release No. 69491 (May 1, 2013), 78 FR 30800 (May 23, 2013). The CFTC adopted its final rule on swap confirmation, 17 CFR 23.501 ("CFTC Rule"), in 2012. *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012) ("CFTC Adopting Release").

[14] Comments were received from Chris Barnard, dated Jan. 22, 2011 ("Barnard"); Robert Pickel, Executive Vice Chairman, International Swaps and Derivatives Association, Inc., dated Feb. 22, 2011 ("ISDA I"); Jeff Gooch, Chief Executive Officer, MarkitSERV, dated Feb. 22, 2011 ("MarkitSERV"); Anonymous, dated Feb. 19, 2011 ("Anonymous"); Dennis Kelleher, President & CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc., dated Jul. 22, 2013 ("Better Markets I"); Robert G. Pickel, Chief Executive Officer, International Swaps and Derivatives Association, Inc., dated Jul. 22, 2013 ("ISDA II"); and Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association, Investment Company Institute, Securities Industry and Financial Markets Association, dated May 21, 2013 (in relevant part, this letter requested that the Commission grant additional time for the commenters to analyze the implications of the Commission's cross-border proposal on certain rules, including the Proposed Rule that the Commission reopened for comment).

Final Rule 15Fi–2 generally requires an SBS Entity to provide a trade acknowledgment through electronic means disclosing all the terms of a security-based swap transaction to its counterparty promptly, but in any event no later than then end of the first business day following the day of execution. Final Rule 15Fi–2 also requires an SBS Entity to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment, and to promptly verify the accuracy of, or otherwise dispute with its counterparty, the terms of a trade acknowledgment it receives. In addition, Final Rule 15Fi–2 provides an exception from the requirement to send a trade acknowledgment for clearing transactions and an exception for certain security-based swap transactions executed on an SBSEF or a national securities exchange, or accepted for clearing by a clearing agency. Finally, Final Rule 15Fi–2 provides to an SBS Entity that is also a broker or dealer an exemption from Exchange Act Rule 10b–10 if the SBS Entity provides a trade acknowledgment, or timely verifies or disputes the terms of a trade acknowledgment that it receives, in compliance with the Final Rules.

Final Rules 15Fi–1 and 15Fi–2 reflect deliberation by the Commission of the way that its rules could affect the security-based swap market. The Commission has sought to adopt rules that take into account current market practices while providing appropriate protections for investors’ interests and to promote the purposes of the Exchange Act. In developing these rules, Commission staff consulted and coordinated with the CFTC and the prudential regulators.[15]

B. Cross-Border Application and Availability of Substituted Compliance

In 2013, the Commission proposed rules and interpretive guidance to address the cross-border application of Title VII, including requirements applicable to security-based swap dealers and major security-based swap participants.[16] The Commission in particular expressed the preliminary view that the Title VII requirements apply generally to the activities of registered security-based swap dealers and major security-based swap participants.[17] The Commission also proposed rules that would provide that a registered foreign security-based swap dealer, a foreign branch of a registered U.S. security-based swap dealer or a foreign major security-based swap participant, with respect to their foreign business, shall not be subject to certain transaction-level business conduct requirements.[18]

As part of that Cross-Border Proposing Release, the Commission also proposed rules to establish a framework to permit market participants to satisfy certain requirements by complying with comparable regulatory requirements of a foreign jurisdiction. Among these was a proposed rule by which foreign security-based swap dealers registered with the Commission might satisfy requirements under Exchange Act Section 15F—other than dealer registration requirements—by complying with the corresponding rules and regulations established in a foreign jurisdiction.[19]

As discussed below, a number of commenters to the Cross-Border Proposing Release addressed various aspects of the proposed substituted compliance framework for security-based swap dealers.

As discussed below, moreover, the Commission is setting forth its interpretation regarding the cross-border scope of the trade acknowledgment and verification requirements. The Commission also is amending Rule 3a71–6 to provide that when the Commission has made a substituted compliance determination, non-U.S. SBS Entities may satisfy the trade acknowledgment and verification requirements applicable to SBS Entities by complying with comparable requirements of a foreign regime.

II. Discussion of Trade Acknowledgment and Verification Rule

A. Definitions

1. Proposed Rule

We proposed to define several key terms in Rule 15Fi–1 to have the meaning that we believe is commonly attributed to those terms by industry participants. Thus, we proposed to define the term “trade acknowledgment” to mean a written or electronic record of an SBS transaction sent by one party to the other.[20] We also proposed that the term “verification” would mean the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty,[21] and that a “confirmation” of an SBS transaction would mean a trade acknowledgment that has been verified.[22] “Execution” would have been defined to mean the point at which the parties become irrevocably bound to a transaction under applicable law.[23]

Proposed Rule 15Fi–1 also would have defined certain items that SBS Entities would have been required to include on a trade acknowledgment, including “asset class”;[24] “broker ID”;[25] “desk ID”;[26] “participant ID”;[27] “price;[28] and “trader ID”.[29] UIC was also defined to mean the unique identification code assigned to a person, unit of a person, or product by or on behalf of an internationally recognized standards-setting body that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory.[30] These terms were proposed to be defined as in the proposed rules for reporting and public dissemination of SBS.[31]

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[15] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall “consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purpose of assuring regulatory consistency and comparability, to the extent possible.”

[16] *See* Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968, 30986 (May 23, 2013) (“Cross-Border Proposing Release”).

[17] *See* notes 191 to 195, *infra*, and accompanying text.

[18] *See* note 197, *infra*, and accompanying text.

[19] *See* Cross-Border Proposing Release, 78 FR at 31088, 31207–08 (proposed Exchange Act Rule 3a71–5). In adopting final rules related to the registration requirements applicable to security-based swap dealers, the Commission stated that substituted compliance would not be available in connection with those registration requirements. *See* Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 48972–73 (Aug. 14, 2015) (“Registration Adopting Release”). Also, in 2014, the Commission adopted a final procedural rule regarding the submission of requests for substituted compliance determinations. *See* Cross-Border Adopting Release, 79 FR at 47357–60, 47369 (Exchange Act Rule 0–13).

[20] *See* proposed Rule 15Fi–1(a)(10).

[21] *See* proposed Rule 15Fi–1(a)(13).

[22] *See* proposed Rule 15Fi–1(a)(4).

[23] *See* proposed Rule 15Fi–1(a)(6).

[24] *See* proposed Rule 15Fi–1(a)(1) (defining the term to mean “those security-based swaps in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives”).

[25] *See* proposed Rule 15Fi–1(a)(2) (defining the term to mean “the unique identification code (“UIC”) assigned to a person acting as a broker for a participant”).

[26] *See* proposed Rule 15Fi–1(a)(5) (defining the term to mean “the UIC assigned to the trading desk of a participant or of a broker of a participant”).

[27] *See* proposed Rule 15Fi–1(a)(7) (defining the term to mean “the UIC assigned to a participant”).

[28] *See* proposed Rule 15Fi–1(a)(8) (defining the term to mean “the price of a security-based swap transaction, expressed in terms of the commercial conventions used in that asset class”).

[29] *See* proposed Rule 15Fi–1(a)(11) (defining the term to mean “the UIC assigned to a natural person who executes security-based swaps”).

Proposed Rule 15Fi–1 also would have defined "clearing agency" for purposes of the rule to mean a clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934.[32] In addition, the proposed rule would have defined "processed electronically" to mean entered into a security-based swap dealer or security-based swap participant's computerized processing systems to facilitate clearance and settlement.[33]

2. Comments

Two commenters requested that the Commission clarify the meanings of certain terms used in the proposal, particularly "executed electronically" and "processed electronically."[34] One commenter noted that there are a variety of systems and communication devices that may be used and that may have different assortments of features, and stated its view that it would be inappropriate to include in these terms all transactions for which some element of the transaction is captured or processed through electronic means.[35] This commenter suggested that the Commission define "processed electronically" with reference to a trading facility's electronic processing system.[36] The other commenter suggested that the term "processed electronically" be defined as "entered into a [SBS Dealer] or [Major SBS Participant]'s computerized processing systems to facilitate clearance and settlement, as well as to become capable of being communicated electronically to the counterparty either as trade acknowledgment or as trade verification."[37]

3. Response to Comments and Final Rule

We did not receive any comments on, and we are adopting as proposed the definition for the term "verification" in Final Rule 15Fi–1. Final Rule 15Fi–1(e) as adopted defines the term "execution" substantially as proposed, except we have changed a reference to "parties" in a transaction to "counterparties" to clarify that we are referring to the same persons in each part of the rule where the term is used. Final Rule 15Fi–1(f) adopts the term "trade acknowledgment" substantially as proposed, except that the definition is clarified by changing a reference to a "party" to "counterparty of the security-based swap transaction" for the same reason discussed above. Final Rule 15Fi–1 also defines the terms "clearing transaction" as discussed further in Section II.F. below, "business day" and "day of execution" as discussed further in Section II.C. below, and "security-based swap execution facility" and "national securities exchange" as discussed further in Section II.G. below. In addition, Final Rule 15Fi–1(b) as adopted defines the term "clearing agency" differently than the proposed rule for reasons discussed further in Section II.F. below.

The term "executed electronically" is not being adopted as part of Final Rule 15Fi–1 as a result of changes, discussed in Section II.C. below, made to the rule's timing requirements. The Commission also is not adopting the definition of "processed electronically,"[38] due to changes in Final Rule 15Fi–2's timing requirements and the elimination of the requirement for electronic processing.[39] In addition, as discussed further in Section II.D. below, Final Rule 15Fi–2 does not contain an enumerated list of items that are required to be disclosed on the trade acknowledgment, and thus the Commission is not adopting definitions for the terms "asset class," "broker ID," "desk ID," "participant ID," "price," "trader ID," or "UIC," which were proposed only to define the enumerated contents of the trade acknowledgment. Finally, Final Rule 15Fi–1 does not adopt the term "confirmation," which is not used elsewhere in Final Rules 15Fi–1 or 15Fi–2.

B. Trade Acknowledgment Requirement

1. Proposed Rule

Proposed Rule 15Fi–1(b) would have required an SBS Entity to provide a trade acknowledgment to its counterparty when it purchases an SBS from, or sells an SBS to, the counterparty. As noted in the Proposing Release, the terms "purchase" and "sale" are defined in Sections 3(a)(13) and (14), respectively, of the Exchange Act.[40] As amended by the Dodd-Frank Act, those definitions as applied to SBS transactions include any "execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap."[41] Because the proposed rule would apply solely to an SBS Entity that "purchases" or "sells" an SBS, the proposed rule would be effectively limited to "principal transactions" in which the SBS Entity is a counterparty to the transaction and is acting for its own account.

Proposed Rule 15Fi–1(b) also stated which counterparty that is an SBS Entity to a security-based swap transaction has the responsibility to provide a trade acknowledgment. Specifically, proposed Rule 15Fi–1(b) would have required that, in a transaction between an SBS dealer and a major SBS participant, the SBS dealer would be responsible for providing the trade acknowledgment.[42] In a transaction where only one counterparty is an SBS dealer or major SBS participant, the SBS dealer or major SBS participant would be responsible for providing the trade acknowledgment.[43] In any other transaction involving SBS Entities, the counterparties would be required to select which counterparty would provide the trade acknowledgment.[44] The rule therefore

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[30] *See* proposed Rule 15Fi–1(a)(12). Proposed Rule 15Fi–1(a)(12) also provided that if no standards-setting body meets these criteria, a registered security-based swap data repository shall assign all necessary UICs using its own methodology. If a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, a registered security-based swap data repository shall assign a UIC to that person, unit of a person, or product using its own methodology.

[31] *See* Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010) ("SBSR Proposing Release").

[32] *See* proposed Rule 15Fi–1(a)(3).

[33] *See* proposed Rule 15Fi–1(a)(9).

[34] ISDA I at 5; MarkitSERV at 2, 9.

[35] ISDA I at 5.

[36] *Id.*

[37] MarkitSERV at 9.

[38] *See* proposed Rule 15Fi–1(c)(1)(i) and (ii) (which would have required SBS transactions to be acknowledged within 15 minutes for transactions that were electronically executed and processed electronically, and within 30 minutes for transactions that were not electronically executed but were processed electronically).

[39] *See infra,* Section II.C.

[40] *See* Proposing Release, 76 FR at 3861; *see also* 15 U.S.C. 78c(a)(13) and (14).

[41] Dodd-Frank Act Sections 761(a)(3) and (4), amending Exchange Act Sections 3(a)(13) and (14), respectively; 15 U.S.C. 78c(a)(13) and (14).

[42] *See* proposed Rule 15Fi–1(b)(1)(i).

[43] *See* proposed Rule 15Fi–1(b)(1)(ii).

[44] *See* proposed Rule 15Fi–1(b)(1)(iii). For most transactions subject to the proposed rule, the party responsible for providing the trade acknowledgment would be determined in a similar manner to the party responsible for reporting the transaction under proposed Regulation SBSR. As discussed in the Proposing Release, the Commission used Section 13A(a)(3) of the Exchange Act as a model in proposed Rule 15Fi–1 to determine which counterparty would be responsible for providing the trade acknowledgment in the transaction. *See* Proposing Release, 76 FR at 3862. Section 13A(a)(3) specifies which party is obligated to report certain SBS transactions—an SBS dealer, a major SBS

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would have applied only to SBS Entities, thus there would have been no requirement to provide a trade acknowledgment in a transaction that does not involve an SBS Entity.

The Commission stated in the Proposing Release that it expected that many transactions would be confirmed by "matching services" provided through a clearing agency, noting that it used the term "matching services" in the Proposing Release to refer only to services through which two counterparties enter a new transaction.[45] The Commission also noted in the Proposing Release that a clearing agency is providing matching services if it captures trade information regarding a securities transaction, performs an independent comparison of that information, and issues a confirmation of the transaction.[46] The Commission stated that the use of clearing agencies' matching services would promote the principles of Exchange Act Section 15F(i) and that it wished to encourage SBS Entities to use these matching services. Accordingly, paragraph (b)(2) of the proposed rule would have provided that an SBS Entity would have satisfied its requirement to provide a trade acknowledgment if a clearing agency, through its matching service facilities, produced a confirmation of the SBS transaction.[47]

The Commission also noted in the Proposing Release that a clearing agency may also serve as a central counterparty ("CCP") in SBS transactions whereby the counterparties may novate their contracts to the CCP.[48] The novation would constitute a purchase from or a sale to the clearing agency in the agency model of clearing which predominates in the United States.[49] In the agency model, a swap that is accepted for clearing—often referred to in the industry as an "alpha"—is terminated and replaced with two new swaps, known as "beta" and "gamma."[50] Therefore, such a novation would involve three security-based swap transactions: The initial bilateral contract between the counterparties, a new transaction between the CCP and one of the counterparties to the initial bilateral contract, and a new transaction between the CCP and the other counterparty to the initial bilateral contract. Under proposed Rule 15Fi–1, if an SBS entity were a counterparty to the bilateral transaction, it would be subject to the trade acknowledgment requirement. Further, any subsequent transaction in which an SBS Entity novated the transaction to a CCP would also be subject to the trade acknowledgment requirement. While the purchase or sale would require that an SBS Entity provide a trade acknowledgment under paragraph (b)(1) of the proposed rule, paragraph (b)(2) of the proposed rule would have permitted the CCP to satisfy the SBS Entity's obligation to provide a trade acknowledgment to the SBS Entity's counterparty, both for the initial bilateral transaction between an SBS Entity and its counterparty, and for the subsequent purchases or sales that result from the novation to the CCP.

2. Comments

Commenters focused on paragraph (b)(2) of proposed Rule 15Fi–1, which would have permitted a clearing agency to provide a trade acknowledgment on behalf of an SBS Entity. One commenter suggested that SBS Entities should be permitted to delegate their recordkeeping responsibilities to qualified third parties.[51]

One commenter indicated its view that an SBS Entity should be able to satisfy the proposed rule's requirements merely by executing the transaction on a swap execution facility or a designated contract market, or by clearing the swap through a derivatives clearing organization.[52] Another commenter believed, however, that execution platforms would not hold all the data necessary to bilaterally confirm trades, either because the data is assumed at execution (such as payment frequency) or because the execution platform lacks bilaterally specific terms (such as the master confirmation agreement type and date).[53] These comments are addressed in Sections II.F and II.G below.

One commenter also maintained that any swap execution facility, designated contract market, or derivatives clearing organization that provides confirmations should be required to meet all the regulatory requirements applicable to clearing agencies that provide confirmations.[54] Alternatively, the commenter suggested that the Commission provide an exemption from registration as a clearing agency for "confirmation clearing agencies," or otherwise provide a conditional exemption from registration that would apply only relevant requirements to confirmation clearing agencies.[55] The commenter also suggested that the registration requirements applicable to entities that must register with the Commission as clearing agencies for providing confirmation services should be fair and apply to all entities that provide similar acknowledgment, verification, and confirmation services.[56] Moreover, the commenter indicated that "confirmation clearing agencies" should be subject to a more limited scope of clearing agency regulation than credit-substituting central clearing counterparties, or should receive an exemption from certain requirements that the commenter viewed as irrelevant.[57]

3. Response to Comments and Final Rule

We did not receive any comments on proposed paragraph (b)(1) of the proposed rule, and are adopting it as proposed but re-designating it as Rule 15Fi–2(a). We are also making a technical change to paragraph (b)(3) of proposed rule 15Fi–1, changing the word "in" to "by" in one place, re-designating the rule as Rule 15Fi–2(a), and updating cross references in the paragraph to the re-designated rule numbers as appropriate.

In response to comments, the Commission is not adopting paragraph (b)(2) of proposed Rule 15Fi–1, which would have permitted a clearing agency to provide a trade acknowledgment on behalf of an SBS Entity. After further consideration and in response to the comments, we believe that it is appropriate to permit an SBS Entity to rely on a third party of its choice to provide a trade acknowledgment on its behalf because it will allow SBS Entities flexibility to select a provider of these services even if the provider is not a registered clearing agency. The Final Rules do not restrict an SBS Entity's ability to use a third party of its choice to provide a trade acknowledgment. Eliminating paragraph (b)(2) of the

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participant, or a counterparty to the transaction. 15 U.S.C. 78m–1(a)(3).

[45] *See* Proposing Release, 76 FR at 3862.

[46] *Id.* "Confirmation" was proposed to mean a trade acknowledgment that has been subject to verification. *See* proposed Rule 15Fi–1(a)(4).

[47] *See* Proposing Release, 76 FR at 3862 and n.22.

[48] In the Proposing Release, the Commission noted its understanding that in a CCP arrangement, if the original counterparties to a bilateral SBS transaction are clearing members, they may novate their bilateral trade to the clearing agency (acting as a CCP). In such a novation to a CCP, each counterparty may terminate its contract with the other and enter into a new contract on identical terms with the CCP. In this way, the CCP would become buyer to one counterparty and seller to the other. *See* Proposing Release, 76 FR at 3862.

[49] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14564 at 14599 (Mar. 19, 2015) ("SBSR Adopting Release").

[50] *Id.*

[51] MarkitSERV at 2.

[52] ISDA I at 5.

[53] MarkitSERV at 5.

[54] *Id.* at 7.

[55] *Id.* at 6.

[56] *Id.*

[57] *Id.*

proposed rule will also make the Final Rules more consistent with the CFTC Rule, which does not impose any limitation on which third parties may provide a swap trade acknowledgment or confirmation on behalf of a swap dealer or major swap participant ("Swap Entities").[58] Thus, SBS Entities that are also Swap Entities may use the same third parties to provide trade acknowledgments pursuant to Final Rule 15Fi–2 that they use to comply with the CFTC Rule [59] without regard to whether those third parties are registered as clearing agencies. This may simplify dually-registered SBS Entities' operations or help to mitigate their costs of compliance. However, the Commission emphasizes that the SBS Entity remains responsible for complying with Final Rule 15Fi–2.

We do, however, recognize the role of a clearing agency in security-based swap transactions to which it is a counterparty. Thus, Final Rule 15Fi–2 also provides an exception from an SBS Entity's general requirement to provide a trade acknowledgment for: (1) Clearing transactions, as discussed in Section II.G below; and (2) SBS transactions that are submitted for clearing at a clearing agency, if the transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment under the rule; and the rules, procedures or processes of the clearing agency provide for the acknowledgment and verification of all the terms of the transaction prior to or at the same time that the SBS is accepted for clearing, as discussed in Section II.G below.[60] We also recognize that executing an SBS transaction on an SBSEF may provide the counterparties a means of providing a trade acknowledgment and verifying the transaction and, as discussed further in Section II.G. below, we are excepting certain transactions executed on an SBSEF from the requirement that the counterparties provide a trade acknowledgment.[61]

C. Time To Provide a Trade Acknowledgment

1. Proposed Rule

Proposed Rule 15Fi–1(c) would have provided that the maximum time for providing a trade acknowledgment of an SBS transaction would vary depending upon whether the transaction was electronically executed or electronically processed, but would not exceed 24 hours following execution. Specifically, proposed Rule 15Fi–1(c)(1) would have required any SBS transaction to be confirmed promptly, but in any event:

- For any transaction that has been executed and processed electronically, a trade acknowledgment must be provided within 15 minutes of execution.
- For any transaction that is not electronically executed, but that will be processed electronically, a trade acknowledgment must be provided within 30 minutes of execution.
- For any transaction that the SBS Entity cannot process electronically, a trade acknowledgment must be provided within 24 hours following execution.

The Commission stated that it encourages SBS Entities to minimize the number of manual transactions processed, and to process electronically all SBS transactions if it is reasonably practicable to do so.[62] However, the Commission also stated that it understands that an SBS Entity may have the ability to process electronically only certain SBS transactions. For example, an SBS Entity may have the ability to process electronically certain standardized SBS transactions in certain asset classes, or transactions that it executes on an exchange or SBS execution facility, but may lack the ability to process electronically SBS transactions in other asset classes or that are executed by other means.[63] The Commission also stated that an SBS Entity's ability to process a transaction electronically may be limited by its counterparty's abilities.[64] For example, an SBS Entity may have the ability to process an SBS transaction through a matching facility, but if its counterparty lacks access to the matching facility, it would need to process transactions with that counterparty through non-computerized means.

Proposed Rule 15Fi–1(c)(2) would have provided that an SBS Entity would be required to process electronically an SBS transaction if it has the ability to do so. In other words, an SBS Entity could not delay providing a trade acknowledgment by choosing to process a transaction by non-electronic means. The Commission stated its preliminary view that requiring SBS Entities to acknowledge trades as promptly as they are able to do so would promote the purposes of Exchange Act Section 15Fi–1.[65]

The proposed requirements were intended to promote the stability of the SBS market by preventing documentation backlogs from creating uncertainty over SBS Entities' exposure to SBS. As the Commission noted in the Proposing Release, it expects a lag between the time when an SBS is executed (*i.e.,* the point at which both counterparties become irrevocably bound to a transaction under applicable law), and when the transaction is confirmed (*i.e.,* when a trade acknowledgment of the transaction is provided and verified).[66] Requiring prompt provision of trade acknowledgments also should help SBS Entities to submit timely and accurate reports with respect to those transactions to SBS data repositories. The Commission's proposed rule was intended to promote the goal of promptly providing trade acknowledgments, though it tempered that objective due to the Commission's recognition that it might be difficult to achieve that goal, particularly for customized agreements that are not executed or processed electronically.[67]

2. Comments

Four commenters discussed the timing requirements of proposed Rule 15Fi–1(c).[68] Two comments from the same commenter generally questioned the reason for requiring confirmation in 24 hours or less and expressed concern that it could increase systemic risk by forcing market participants to focus on speed rather than accuracy.[69]

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[58] Two commenters encouraged the SEC and the CFTC to harmonize their rules. MarkitSERV at 9, ISDA II at 3, 8.

[59] *See* 17 CFR 23.501.

[60] *See also infra* Section II.G., which discusses an exception from trade acknowledgment and verification requirements for SBS transactions executed on an SBSEF or national securities exchange, subject to certain conditions.

[61] We are not addressing at this time when a third-party provider of trade acknowledgment and confirmation services, such as one that provides matching services as discussed in the Proposing Release, would be required to register as a clearing agency. In 2011, the Commission issued a temporary conditional exemption from the registration requirement under Section 17A(b)(1) of the Exchange Act for any clearing agency that may be required to register with the Commission solely as a result of providing collateral management services, trade matching services, tear up and compression services, and/or substantially similar services for SBS ("Exempted Activities"). *See* Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Granting Temporary Exemptions from Clearing Agency Registration Requirements under Section 17A(b) of the Exchange Act for Entities Providing Certain Clearing Services for Security-Based Swaps, Exchange Act Release No. 64796 (July 1, 2011). The order provides a temporary exemption, until the compliance date for the final rules relating to registration of clearing agencies that clear security-based swaps pursuant to Sections 17A(i) and (j) of the Exchange Act, from Section 17A(b)(1) of the Exchange Act to persons conducting Exempted Activities. *Id.*

[62] *See* Proposing Release, 76 FR at 3863.

[63] The Commission noted that transactions in non-standardized SBS that are individually negotiated and contain unique terms, or transactions effected telephonically and processed manually, might be in this category. *See* Proposing Release, 76 FR at 3863 and n.28.

[64] *See* Proposing Release, 76 FR at 3863.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] ISDA I; MarkitSERV; ISDA II; Barnard.

One commenter expressed the view that the proposed timing standards are impractical for products where no master confirmation agreement or similar template exists.[70] This commenter also suggested that certain terms of the transaction, such as the counterparty name (if the trade is being allocated by an investment manager) or initial rates, may not be available until after the execution.[71] In addition, this commenter stated that SBS Entities may need more than 24 hours to deliver a trade acknowledgment in cross-border transactions due to business day and time zone differences.[72] Moreover, this commenter maintained that it may not be achievable to send a trade acknowledgment within the proposed time period for a transaction that is neither traded electronically nor processed electronically.[73] The commenter stated that some transactions are heavily negotiated, bespoke in nature, and require protracted post-trade detail work.[74] The commenter also indicated that "complete pre-agreement of terms would require end-users to engage significant legal resources for *all* proposed transactions, as compared to existing practice, which focuses on transactions that have actually been executed."[75]

One commenter compared the Commission's proposed rule (which would have allowed SBS Entities 24 hours from execution to issue the trade acknowledgment for transactions that are not electronically processed) with the CFTC's proposal to require confirmation of non-electronically processed transactions by the end of the day of execution.[76] The commenter suggested that the 24 hour period should be measured only during business days, but expressed doubts that even this time frame could be achieved for all transactions that are not electronically processed.[77]

The commenter also expressed concern that the proposed rule's timing requirement is inconsistent with the CFTC Rule and those of relevant foreign regulatory authorities.[78] The commenter believes that these differences will impose unnecessary costs on market participants, and may lead to confusion in, and disruption of, the SBS market without yielding commensurate benefits.[79] The commenter noted that the CFTC replaced the proposed time periods for swaps executed or processed electronically in their entirety with a requirement that, subject to a compliance phase-in schedule, all swaps among Swap Entities or between swap dealers, major swap participants, and financial entities be confirmed as soon as technologically practicable, but no later than the end of the first business day following the day of execution.[80]

Further, this commenter suggested that different asset classes, and even different products within an asset class, will require tailoring the confirmation timing requirements, particularly between bespoke transactions and "garden variety" security-based swaps.[81]

One commenter suggested that the Commission provide more guidance on how to interpret the term "promptly" as used in proposed Rule 15Fi–1(c).[82]

Two commenters maintained that the proposed rule may affect the way investment managers conduct their business.[83] One of these commenters asserted that certain terms required to be on a trade acknowledgment may not be known to the transacting counterparties within 24 hours of execution, including the counterparty name (if the trade is being allocated by an investment manager).[84] The commenter explained that investment managers commonly execute a single trade and then allocate positions across their clients and this process may take more than 24 hours.[85] The commenter also stated that the allocation process may require investment managers to receive instructions from their clients.[86] The second commenter explained that the current market practice is for investment managers to enter a transaction at the 'execution' level for a certain notional size and price," and only allocate the transaction to multiple underlying funds thereafter.[87] Thus, the commenter suggested measuring the time period in which a trade acknowledgment should be sent from the point when the SBS Entity possesses all the information necessary to issue the trade acknowledgment.[88]

3. Response to Comments and Final Rule

After considering the comments, the Commission is revising proposed Rule 15Fi–1(c) to provide that an SBS Entity must provide a trade acknowledgment promptly, but in any event by the end of the first business day following the day of execution, and renumbering it as Rule 15Fi–2(b).[89] The requirement that the responsible counterparty promptly provide a trade acknowledgment would help ensure that the counterparties know, and have a record of, the terms of their executed agreement in a timely manner. "Promptly," in this context, generally should be understood to mean that an SBS Entity should provide a trade acknowledgment as soon as practicable within the period specified in the rule (by the end of the first business day following the day of execution).[90]

The Commission recognizes the commenters that were concerned that 24 hours might not be enough time for all transactions, and has taken those comments into account in providing additional time under the rule as adopted.[91] The additional time permitted under the rule as adopted to provide a trade acknowledgment takes into account that certain transactions may take more time to acknowledge because of the asset class of the transaction or the bespoke nature of the particular transaction. In addition, the additional time permitted under the rule as adopted takes into account the process by which investment managers allocate transactions, and should help to ensure that SBS Entities have adequate time to provide a trade acknowledgment for transactions that occur late in the day. This time period also will provide efficiencies for SBS Entities that are also Swap Entities by allowing the same amount of time as that required by the CFTC rule requiring confirmation of swap transactions.[92] We also note that, under the final rule, an SBS Entity has at least as much time to provide a trade acknowledgment as it would under one commenter's suggestion that we measure our proposed 24 hour timing requirement only during business days.[93] As compared to the timing requirement of the proposed rule, the final rule's requirement that an SBS Entity provide a trade acknowledgment promptly but no later than the end of the first business day following the day of execution aligns more closely with the timing requirement for confirmation of SBS transactions that have been adopted by certain foreign regulators.[94]

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[69] ISDA I at 3; ISDA II at 3.

[70] ISDA I at 4.

[71] *Id.* at 3.

[72] *Id.*

[73] *Id.* at 5.

[74] *Id.*

[75] *Id.* at 6.

[76] MarkitSERV at 8. The final CFTC Rule requires that Swap Entities, as soon as technologically practicable, but in any event by the end of first business day following the day of execution: (i) Confirm a transaction with another Swap Entity, and (ii) provide a trade acknowledgment to a counterparty that is not a Swap Entity. 17 CFR 23.501(a).

[77] MarkitSERV at 8.

[78] ISDA II at 2.

[79] *Id.*

[80] *Id.* at 2–3.

[81] ISDA II at 3.

[82] Barnard at 2.

[83] *Id.* at 4; MarkitSERV at 8.

[84] ISDA I at 3.

[85] ISDA I at 4.

[86] *Id.*

[87] MarkitSERV at 8.

[88] *Id.*

[89] Final Rule 15Fi–2(b).

[90] An SBS Entity generally should not purposefully delay sending trade acknowledgments, for example by programming its systems to delay sending the trade acknowledgments until the end of the allowable time period specified in the rule.

[91] *See* ISDA I at 3–4; ISDA II at 3; MarkitSERV at 8.

[92] *See* 17 CFR 23.501(a)(1)–(2). This change thus responds to commenters who requested greater

Given this change, the Commission is also defining "day of execution" to mean the calendar day of the counterparty to the security-based swap transaction that ends the latest, provided that if a security-based swap transaction is: (1) Entered into after 4:00 p.m. in the place of a counterparty; or (2) entered into on a day that is not a business day in the place of a counterparty, then such security-based swap transaction shall be deemed to have been entered into by the counterparty on the immediately succeeding business day of that counterparty, and the day of execution shall be determined with reference to such business day. This definition matches that used in the CFTC Rule, except to replace references to "party" in the CFTC rule with "counterparty" in Rule 15Fi–2, and references to "swap" with "security-based swap."[95] For clarity, the Commission is also defining "business day" to mean any day other than a Saturday, Sunday, or a legal holiday.[96] For SBS Entities in the U.S., a "legal holiday" generally would be any U.S. federal holiday. The Commission recognizes that counterparties to the trade may be in different time zones and/or jurisdictions, and that in the absence of Rule 15Fi–1(d), there could be confusion about whether "business day" referred to the jurisdiction and time zone of one counterparty or the jurisdiction and time zone of the other counterparty. These definitions help to clarify the obligation to provide a trade acknowledgment in cross-border transactions or those in which the parties have different business days or time zones. These definitions also create consistency with the CFTC Rule.

As noted, the timing requirement in Final Rule 15Fi–2(b) takes into account and should help address the comment suggesting that the Commission adopt different timing requirements for different asset classes of security-based swap transactions and to distinguish between the timing requirements for transactions that are bespoke to greater or lesser degrees.[97] Although the timing requirement is uniform for transactions in any asset class and between standardized and bespoke contracts, the additional time provided should address what we believe is the root of the commenter's concern—that the proposed rule did not provide sufficient time to provide a trade acknowledgment for certain asset classes or for more bespoke transactions. The Commission notes that a uniform timing requirement for trade acknowledgments is consistent with the CFTC Rule, which does not recognize distinctions between different asset classes or whether a swap is standardized when specifying the time allotted for provision of a trade acknowledgment or confirmation. The Commission recognizes that the commenter may desire even more time than that provided in the final rule to provide a trade acknowledgment in bespoke transactions, but does not believe that it is appropriate to provide for a longer period of time. The rule as adopted takes into account the comments requesting a longer period of time than that which we proposed, as well as the objective of the proposed rule to help ensure that the counterparties know, and have a record of, the terms of their executed agreement in a timely manner, and the Commission believes that the time period as adopted is an appropriate approach.

One commenter noted that different investment managers may have different policies for allocating trades to their clients and do so over differing time periods.[98] For example, assume a single investment manager manages several investment funds and has discretionary authority to execute SBS transactions with an SBS Entity on behalf of each of the funds. Assume further that the SBS Entity knows the universe of funds managed by the investment manager. We understand that common industry practice is that the SBS Entity will execute SBS transactions with the investment manager on behalf of one or more of the funds it manages without requiring the investment manager to disclose at the time of execution the specific funds that will be the counterparties to the transaction. The timing requirement in Final Rule 15Fi–2(b) recognizes that allocations by an investment manager may not occur before or contemporaneous with the execution of the "bunched" order, and thus it allows additional time compared to the proposed rule for an SBS Entity to provide a trade acknowledgment.[99]

In light of these considerations and the time period for providing a trade acknowledgment that is being adopted, the Commission is not modifying the rule, as suggested by one commenter, to measure the time period in which a trade acknowledgment should be sent from the point when the SBS Entity possesses all the information necessary to issue the trade acknowledgment. Generally, the Commission is concerned that, once an execution has occurred, delaying the trade acknowledgment for an indefinite and unknown amount of time could create an unacceptable period of lingering uncertainty about the terms of the transaction. This in turn would extend the period of risk presented by undocumented transactions and would be inconsistent with the objective of the rule to promote timely provision of the trade acknowledgment. With respect to the commenter's specific concerns regarding allocations or the initial rate for a transaction,[100] the Commission believes, as discussed above,[101] that the additional time allowed under Final Rule 15Fi–2(b) for an SBS Entity to provide a trade acknowledgment should provide an appropriate amount of time for an SBS Entity to obtain the information required on a trade acknowledgment that was not available at the time of execution. The timing requirements of the CFTC Rule are substantially similar to the Commission's final rule,[102] and many

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conformity between the Commission's and the CFTC's rules. *See* MarkitSERV at 9, ISDA II at 3, 8.

[93] MarkitSERV at 8.

[94] *See* note 78, *supra*, and accompanying text. *See, e.g.*, Commission Delegated Regulation 149/2013, art. 12(1)–(2), 2013 O.J. (L52) 20–21 (EU) (requiring the documentation of the counterparties' agreement to all the terms of non-centrally cleared OTC derivative contracts as soon as possible and at the latest as follows: (1) If concluded between financial counterparties or certain non-financial counterparties with OTC derivatives portfolios above specified thresholds, by the end of the next business day following the date of execution, and (2) if concluded with a non-financial counterparty with an OTC derivatives portfolio at or below specified thresholds, by the end of the second business day following the date of execution).

[95] 17 CFR 23.501(a)(5)(i).

[96] Final Rule 15Fi–1(a).

[97] *See* ISDA II at 3.

[98] ISDA I at 4.

[99] The Commission has proposed rules concerning margin requirements and books and record keeping requirements for SBS. To the extent these rules are adopted, an SBS Entity that accepts trades from an agent on behalf of unidentified principals in this manner will need to separately consider its obligations under those rules.

[100] ISDA I at 3.

[101] *See* notes 98–99, *supra*, and associated text.

[102] *See* 17 CFR 23.501(a) (requiring that a Swap Entity either confirm its transaction (if it is with a

Continued

SBS Entities that will be subject to the final rule are Swap Entities subject to the CFTC Rule. We have considered the commenter's request that we effectively allow an unlimited amount of time to provide a trade acknowledgment if the SBS Entity has not received certain information, such as the allocation or initial rate for a transaction, and we also considered the objectives of the rule to promote timely acknowledgment and verification of transactions. After taking into consideration the comments and the objectives of the rule, we believe, as discussed above, that requiring that SBS Entities provide the trade acknowledgment by the end of the next business day after the day of execution is an appropriate approach that promotes timely acknowledgment and verification of the terms of the transactions. We are not adopting proposed Rule 15Fi–1(c)(2), which would have required that an SBS Entity electronically process transactions if it has the ability to do so. The Commission proposed the requirement to improve the recordkeeping of SBS Entities and further promote the goals of Section 15F(i) of the Exchange Act.[103] However, the Commission believes that requiring electronic processing is not necessary at this time to achieve this objective in light of the Final Rule's timing requirement—which requires prompt acknowledgment of SBS transactions and thus encourages SBS Entities to electronically process transactions to improve their ability to comply with its requirements.

D. Form and Content of Trade Acknowledgments

1. Proposed Rule

Paragraph (d) of proposed Rule 15Fi–1 would have required the trade acknowledgments to be provided through any electronic means that provide reasonable assurance of delivery and a record of transmittal. The Commission proposed the electronic delivery requirement to promote the timely provision of trade acknowledgments in accordance with Exchange Act Section 15F(i). The proposed rule was intended to provide flexibility for SBS Entities to determine the specific electronic means by which they will comply.[104]

The Commission noted in particular that SBS Entities may choose to provide trade acknowledgments through a mutually agreed upon electronic standard, such as a messaging system that uses Financial products Markup Language (commonly known as FpML).[105] The Commission also specifically discussed facsimile transmission or electronic mail as a means of providing trade acknowledgments, particularly when engaging in SBS transactions with counterparties that rarely buy or sell SBS and that consequently do not have the means to receive trade acknowledgments otherwise.[106] The Commission further stated that providing trade acknowledgments exclusively by mail or overnight courier would not satisfy the requirements of the proposed rule.[107]

Paragraph (d) of proposed Rule 15Fi–1 also would have required trade acknowledgments to contain a minimum of 22 items of information, all but one of which were identical to the items that the Commission had proposed that SBS Entities would be required to report to an SBS data repository pursuant to Regulation SBSR.[108]

2. Comments

One commenter asserted that product innovation or the bespoke nature of some SBS might cause situations where electronic confirmation cannot be provided, and that the low number of transactions in a specific instrument type might sometimes be insufficient to justify the cost of building the capabilities to electronically confirm transactions.[109] Thus, the commenter indicated that it is not realistic or achievable for the Commission to mandate electronic confirmation of all SBS transactions, and it should be merely encouraged rather than required.[110]

Another commenter suggested that the trade acknowledgment terms should be only the minimum required to evidence agreement to a trade and its material economic terms, and objected to many of the enumerated items in the proposed rule.[111] In particular, the commenter objected to inclusion on the trade acknowledgment of the following specific items:

- Asset class (recommending that the Commission adopt standard taxonomy before requiring this item);
- notional amount (suggesting that the quantity of assets—shares—rather than notional amount should be disclosed for equity derivatives);
- time of the transaction (because execution times are not typically recorded for voice trades);
- counterparty regulatory status (because dealers may not know their counterparty's regulatory status unless it is published by the Commission) and the counterparty's broker, trading and desk identification (noting that there is no analog under Exchange Act Rule 10b–10, and because the information would presumably be maintained as central reference data that could be saved elsewhere);
- an indication that the transaction did not involve an opportunity to negotiate a material term of the contract, if the transaction involved an existing SBS transaction;
- certain information for customized transactions (because inclusion of the elements necessary to calculate prices may go beyond the scope of what can or should be included in a confirmation);

Swap Entity) or provide a trade acknowledgment for the transaction (if it with counterparty that is not a Swap Entity) as soon as technologically practicable, but in any event by the end of first business day following the day of execution.

[103] *See* Proposing Release, 76 FR at 3863.

[104] *See id.* at 3864.

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *See* SBSR Proposing Release, note 31, *supra.* The Commission later adopted Regulation SBSR. *See* SBSR Adopting Release, note 49, *supra.*

Specifically, proposed Rule 15Fi–1(d) would have required the trade acknowledgment to include terms from proposed Regulation SBSR, including: (1) The asset class; (2) information identifying the SBS instrument and the specific asset(s) or issuer of a security on which the SBS is based; (3) the notional amount and currency; (4) date and time of execution; (5) the effective date; (6) the scheduled termination date; (7) the price; (8) the terms of any fixed or floating rate payments, and the frequency of any payments; (9) whether or not the security-based swap would have been cleared by a clearing agency; (10) an indication if both counterparties are SBS dealers; (11) if the transaction involved an existing SBS, an indication that the transaction did not involve an opportunity to negotiate a material term of the contract, other than the counterparty; (12) an indication if the SBS is customized to the extent that the information provided above does not provide all of the material information necessary to identify the customized SBS or does not contain the data elements necessary to calculate the price; (13) the participant ID of each counterparty; (14) the broker ID, desk ID, and trader ID of the reporting party; (15) the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each counterparty to the other; (16) the title of any master agreement, or any other agreement governing the transaction, incorporated by reference and the date of any such agreement; (17) the data elements necessary for a person to determine the market value of the transaction; (18) if the SBS will be cleared, the name of the clearing agency; (19) if the SBS is not cleared, whether the exception in Section 3C(g) of the Exchange Act (15 U.S.C. 78c–3(g)) was invoked; (20) if the SBS is not cleared, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; and (21) the execution venue. In addition to these items from proposed Regulation SBSR, proposed Rule 15Fi–1(d)(22) would also have required the trade acknowledgment to include any additional information that is required for the transaction to be cleared by a clearing agency, if the transaction was to be cleared.

[109] MarkitSERV at 10.

[110] *Id.* at 2 and 10.

[111] ISDA I at 6.

- a description of the payment streams (because contingent payment streams may be elaborate and can be located in other documents);
- the data elements necessary for the counterparty to determine the market value (because this information may also go beyond the scope of what can or should be included in a confirmation);
- venue (because it is unclear whether this means trading venue); and
- clearing-required information (asserting that it is unnecessary to include clearing agency instructions on the confirmation).[112]

The commenter also urged the Commission to reconsider requiring the trade acknowledgment to include all the data elements necessary to determine the value of the security-based swap.[113] The commenter stated that valuation procedures vary from party to party, and, to the extent that they must be agreed upon, they will be heavily negotiated. The commenter said that requiring the results of the negotiations to be reflected in the trade acknowledgment would slow down the confirmation process.[114]

One commenter also objected to the proposed rule diverging substantially from the CFTC Rule, which requires parties to memorialize the agreement of the counterparties to all the terms of a swap transaction without identifying specific items to be listed on the confirmation.[115] This commenter also requested that the Commission's rule allow for documentation to differ between different asset classes.[116]

One commenter suggested that "the record trail created by the verification process (*i.e.*, the confirmation) should constitute the best evidence that the counterparties . . . agree to the terms and binding nature of the trade." [117] This commenter indicated that the current practice in the security-based swap market is for counterparties to execute a transaction by agreeing to the main economic terms of the transaction (*e.g.*, as to pricing and notional size) and agreeing to other economic details only when they differ from the accepted market practice or are specific to the terms of the counterparty relationship (*e.g.*, master agreement reference or credit terms).[118] The commenter explained that the process of adding additional information to the transaction record to create a complete documentation of the transaction is referred to as "trade enrichment," and that trade enrichment may happen through a variety of processes, including trade capture systems or automated confirmation services.[119] The commenter also suggests that the definition of "processed electronically" should include electronic communication as a required component.[120]

3. Response to Comments and Final Rule

The Commission is adopting the requirement to provide a trade acknowledgment through any electronic means that provide reasonable assurance of delivery and a record of transmittal as proposed in Rule 15Fi–1(d), but is re-designating it as Rule 15Fi–2(c).[121] The Commission acknowledges the comment that it should allow SBS Entities to deliver trade acknowledgments in certain instances on paper rather than electronically,[122] but the Commission believes that requiring electronic delivery of trade acknowledgments will promote the objectives of Exchange Act Section 15F(i)(1) for timely and accurate confirmation and documentation of security-based swaps. Specifically, the electronic delivery of trade acknowledgments will result in SBS counterparties receiving trade acknowledgments in a timelier manner, which will enable them to review the terms of their transactions more quickly to either verify the transactions or dispute the terms. This in turn should help to reduce operational risk by decreasing the amount of time within which a counterparty may recognize and work to resolve any potential discrepancies in the trade documentation. The Commission also understands that electronic confirmation is the norm for SBS transactions.[123] The Commission does not, however, specify the means of electronic delivery, so SBS Entities may rely on any electronic means, such as email systems, to comply with the rule's requirements rather than acquiring or building new computer systems solely to provide trade acknowledgments. Thus, taking into consideration the potential costs of electronic trade acknowledgments and the expected benefits, the Commission believes that it is appropriate to require electronic delivery of trade acknowledgments. The Commission acknowledges the comment that asserts that it might not be possible to provide an electronic confirmation in all cases.[124] However, the rule as adopted does not require any particular means of electronic delivery; for example, an SBS Entity could send an email with a PDF attachment as a trade acknowledgment to a counterparty. Thus, given the flexibility provided by the rule to provide an electronic confirmation, the Commission believes it is appropriate to require SBS Entities to provide an electronic trade acknowledgment by the end of the next business day after the day of execution.

After careful consideration of the comments, the Commission is revising proposed Rule 15Fi–1(d), now re-designated as Final Rule 15Fi–2(c), to require an SBS Entity to disclose all the terms of the security-based swap transaction, rather than certain enumerated items.[125] The Commission agrees with the commenter that maintained that the confirmation should constitute the best record of the transaction so as to help SBS counterparties have a record that clearly identifies their rights and obligations under the SBS, and thus is requiring that the trade acknowledgment (which forms the basis of the confirmation) include all the terms of the transaction. Final Rule 15Fi–2(c) also responds to objections to the required disclosure of certain listed data requirements of proposed Regulation SBSR, such as the participant ID of each counterparty, the broker ID, the desk ID, and the trader ID, which are not terms of the transaction and may not reflect the data that is most relevant to counterparties. Further, by not enumerating the content requirements of the trade acknowledgment, Final Rule 15Fi–2(c) also allows for flexibility for counterparties with respect to the information provided for different SBS in different asset classes. The requirement to report all the terms of the SBS transaction implicitly accepts that if the terms of SBS in different classes vary, only the terms relevant to the specific asset class of the transaction being acknowledged must be included on the trade acknowledgment under Final Rule 15Fi–2.[126]

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[112] *Id.* at 6–7.

[113] *Id.* at 4.

[114] *Id.*

[115] ISDA II at 3; *see also* CFTC Rule, 17 CFR 23.501 and CFTC Adopting Release, 77 FR 55901.

[116] ISDA I at 2.

[117] MarkitSERV at 1.

[118] *Id.* at 2.

[119] *Id.*

[120] *Id.*

[121] The final rule also contains a technical correction changing the word "in" to "by."

[122] *See* notes 109 and 110, *supra*, and accompanying text.

[123] *See* the discussion of current trade confirmation practices in Section VII.B.3 below.

[124] *See supra* notes 109 and 110.

[125] We emphasize that Rule 15Fi–2 as adopted does not limit any disclosure obligations that an SBS Entity may have under other applicable federal securities laws, rules or regulations, including the anti-fraud provisions of the federal securities laws.

This change also responds to commenters who advocated for greater consistency between the Commission's rules and those of the CFTC.[127] The Commission believes that commonality between the trade acknowledgment and verification standards for swaps and SBS will facilitate compliance for SBS Entities that are also Swap Entities and thus are already complying with the CFTC's rule.

Further, the Commission acknowledges that an SBS Entity may want to comply with the Final Rule's content requirements by incorporating documents by reference into the trade acknowledgment. For example, the Commission understands that an SBS Entity may want to include by reference in the trade acknowledgment certain standard provisions in its master agreement with its counterparty that will control each SBS transaction executed with that counterparty. An SBS Entity that chooses to utilize this method should ensure that it complies with any applicable rules regarding its maintenance of the documents incorporated by reference[128] and that the trade acknowledgment reflects the actual terms of each SBS transaction.[129]

The Commission is not adopting any changes to the proposed rule following one commenter's suggestion that "processed electronically" be defined to include electronic communication as a required component. The Commission proposed the term "processed electronically" to define a group of SBS transactions for which the proposed rule would have required SBS Entities to provide a trade acknowledgment within 15 or 30 minutes of the transaction's execution. The proposed rule would have required SBS Entities to provide a trade acknowledgment for certain other transactions no later than 24 hours from the time of execution. The Commission is not adopting a definition of "processed electronically," and the final rule does not use this term. The final rule instead sets a uniform time during which SBS Entities must provide a trade acknowledgment.

E. Trade Verification

1. Proposed Rule

As part of the trade verification process, paragraph (e)(1) of proposed Rule 15Fi–1 would have required an SBS Entity to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of trade acknowledgments that it provides pursuant to the proposed rule. The Commission stated that it preliminarily believed that this requirement would help to minimize the number of unverified trade acknowledgments, and thereby reduce the operational risk and uncertainty associated with unverified SBS transactions.[130]

Proposed Rule 15Fi–1(a)(13) would have defined "verification" as the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.[131] The Commission noted in proposing the rule that verifying trades may be done through a process in which the counterparty affirms the transaction terms after reviewing a trade acknowledgment sent by the first counterparty.[132] The counterparty may also dispute the terms of the transaction (often referred to as a "DK" of the transaction, short for "don't know"). Verifying or disputing the transaction may be done by various methods, including where the first counterparty transmits a trade acknowledgment to its counterparty, after which the counterparty—electronically, manually, or by some other legally equivalent method—either signs and returns the trade acknowledgment to verify the transaction, or notifies the counterparty that it rejects the terms. By promoting prompt verification, the proposed rule was intended to minimize the operational risk and uncertainty associated with SBS transactions for which trade acknowledgments have not been verified.

For SBS transactions that are not subject to clearing, paragraph (e)(1) of the proposed rule would have required SBS Entities to establish their own trade verification processes. For example, an SBS Entity could establish, maintain, and enforce policies and procedures under which it will only deal with a counterparty that agrees to timely review any trade acknowledgment to ensure that it accurately describes their agreed upon transaction, and sign and return the trade acknowledgment as evidence of the verification. SBS Entities' policies and procedures for verification could also include using a third-party matching service.

Proposed Rule 15Fi–1(e)(2) would have provided that: in any SBS transaction to be cleared through a clearing agency, an SBS Entity must comply with the verification process prescribed by the clearing agency;[133] and that such compliance would have satisfied the verification requirements of subparagraph (e)(1) with respect to the transaction.[134]

Paragraph (e)(3) of the proposed rule would have required SBS Entities to promptly verify the accuracy of, or dispute with their counterparties, the terms of trade acknowledgments they receive pursuant to the proposed rule. This requirement was intended to reduce the incidence of unverified SBS transactions, thereby reducing the operational risk for SBS Entities.[135]

2. Comments

One commenter recommended applying time limitations to verifying the transaction in addition to the proposed time limitation for sending the trade acknowledgment.[136] The commenter suggested that if the trade acknowledgment is executed electronically and processed electronically, the trade acknowledgment should be sent within 15 minutes, and the verification provided within 15 minutes of the trade acknowledgment being sent. Similarly, trades that must be acknowledged within 30 minutes should have to be verified within 30 minutes of the trade acknowledgment being sent, and trades acknowledged within 24 hours of execution should have to be verified within 24 hours of receiving the trade acknowledgment.[137] This commenter also supported the CFTC's proposed requirement that Swap Entities have written policies and procedures reasonably designed to ensure confirmation with non-financial entities not later than the next business day following the day the swap transaction is executed, and the commenter suggested that Commission harmonize its requirement with the CFTC's requirement.[138]

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[126] The change to require all of the terms of the transaction also responds to the commenter who opposed requiring the trade acknowledgment to include all the data elements necessary to determine the value of the security-based swap, as Final Rule 15Fi–2 does not state that an SBS Entity must include the data elements necessary to determine the value of the security-based swap on the trade acknowledgment.

[127] MarkitSERV at 9; ISDA II at 3, 8.

[128] The Commission has proposed rules governing books and recordkeeping requirements for SBS Entities. *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014) ("SBS Books and Records Proposing Release").

[129] This position is consistent with the CFTC's interpretive guidance for the confirmation of swap transactions. *See* CFTC Adopting Release, 77 FR 55903 at 55919.

[130] Proposing Release, 76 FR at 3866.

[131] *See* proposed Rule 15Fi–1(a)(13).

[132] Proposing Release, 76 FR at 3866.

[133] The Commission noted in the Proposing Release that it expected that clearing agencies would adopt rules to obtain the signature of a counterparty on a trade acknowledgment as part of their verification procedures. In electronically processed transactions, the clearing agency could obtain counterparties' signatures electronically or by other means. *See* Proposing Release, 76 FR at 3866.

[134] As also noted in the Proposing Release, each counterparty could submit the SBS terms to an agreed-upon matching service operated by a registered clearing agency. The matching service would then compare the submitted transaction terms. If the submitted SBS terms agreed, the transaction would be verified; otherwise, the matching service would notify the counterparties of the discrepancies, and the counterparties would have the opportunity to resolve them. *Id.* at n.39.

[135] *See* proposed Rule 15Fi–1(e)(3); *see also* Proposing Release, 76 FR at 3867.

[136] MarkitSERV at 9.

One commenter stated its view that the proposed trade acknowledgment and verification process does not account for competing conventions in some transactions.[139] The commenter stated that, for some products, an acknowledgment or notice is sent for certain "'mid-life' trade events" without the expectation of verification.[140] In other transactions, both counterparties may issue a trade acknowledgment to their counterparty, but will respond only if there are discrepancies.[141] The commenter noted that counterparties may also rely on "negative affirmation," which relies only on one-way confirmations unless the terms are being disputed.[142]

One commenter supported what it viewed as a requirement in proposed Rule 15Fi–1(e) that the counterparties "consent to the binding nature of the verification process (*i.e.,* produce a legally binding confirmation)", and made the observation that this is consistent with the CFTC Rule.[143]

3. Response to Comments and Final Rule

The Commission is adopting proposed Rule15Fi–1(e) with some modifications compared to the proposed rule as described below, and is redesignating it as Final Rule 15Fi–2(d). The Commission believes that requiring SBS Entities to establish, maintain, and enforce written policies and procedures reasonably designed to obtain prompt verification of security-based swap transactions will encourage prompt verification of trades with SBS Entities and thereby will advance the objective of Exchange Act Section 15(F)(i) to promote timely and accurate confirmation and documentation of security-based swaps. Final Rule 15Fi–2(d)(2) will further promote this objective by requiring an SBS Entity to promptly verify the accuracy of, or otherwise dispute with its counterparty, the terms of a trade acknowledgment it receives pursuant to Final Rule 15Fi–2(a).[144]

The Commission is not adopting, as suggested by a commenter, a maximum amount of time for an SBS Entity to verify a trade acknowledgment that it receives. The Commission believes that it is appropriate for the final rule to specify a maximum amount of time for an SBS Entity to provide a trade acknowledgment because the trade acknowledgment serves the important roles of notifying the recipient that (1) its counterparty believes it has executed an SBS transaction and (2) the purported terms of that transaction. The recipient then has the opportunity to review the trade acknowledgment to determine if the trade acknowledgment accurately reflects its agreement with the counterparty. If the recipient agrees that the trade acknowledgment is accurate, the recipient could be expected as an ordinary business practice to verify the transaction promptly. If the recipient believes the trade acknowledgment is inaccurate, the recipient may need additional time to resolve its dispute about the purported terms. Placing a specific time period on the requirement to verify a transaction could mean that, even in the case of good faith disputes about the terms of a trade acknowledgment, a trade acknowledgment recipient would be made to verify, and effectively agree to, incorrect terms on a trade acknowledgment solely to avoid violating the rule even though both counterparties might benefit from using more time to resolve the dispute. The trade acknowledgment's timing requirement thus promotes timely documentation of the transaction, and the flexibility afforded by the final rule's requirements on verification help to safeguard the accuracy of that documentation.

The Commission also is not modifying the proposed rule in response to the commenter's concern that it does not account for differing conventions with respect to "'mid-life' trade events." It is not clear whether the concern is with respect to certain corporate actions (*e.g.,* mergers, dividends, stock splits, or bankruptcies) that may affect the securities underlying the SBS, or with respect to modifications to the SBS agreed by the counterparties after execution (*e.g.,* novations or assignments, unwinds, terminations, or other amendments or modifications to the SBS transaction). In our view, such corporate actions do not require a trade acknowledgment under the rule because these actions are not themselves a purchase or a sale of an SBS.[145] Thus, although counterparties may choose to issue some record acknowledging these actions according to whatever conventions the counterparties prefer, it is not required by Final Rule 15Fi–2. A novation, assignment, unwind or termination (prior to the scheduled maturity date) of an existing SBS would be a purchase or sale, and thus require a trade acknowledgment under Final Rule 15Fi–2.[146] This is consistent with the objective of the rules, to help ensure that counterparties have a complete understanding of their agreement and a record of its terms in a timely manner.

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[137] *Id.*

[138] *Id.* The CFTC Rule as adopted requires that a Swap Entity establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction with a Swap Entity or a financial entity no later than the end of the first business day following the day of execution, and a requirement that a Swap Entity establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that it enters with any other entity not later than the end of the second business day following the day of execution. *See* 17 CFR 23.501(a)(3).

[139] ISDA I at 8.

[140] *Id.*

[141] *Id.*

[142] *Id.* at 5.

[143] MarkitSERV at 4–5. We note that nothing in the rule as proposed or adopted requires parties to "consent to the binding nature of the trade verification process."

[144] "Promptly," in this context, generally should be understood to mean that an SBS Entity should verify or otherwise dispute with its counterparty, the terms of a trade acknowledgment that it receives as soon as practicable. *See* note 90, *supra,* and the related text.

[145] However, a modification to an SBS that was made by the counterparties as a result of a corporate action with respect to a security underlying the SBS may be a purchase or sale of an SBS under the definition of "purchase" or "sale" in Exchange Act Sections 3(a)(13) and (14).

[146] Other amendments or modifications to an existing SBS may also be purchases or sales if they meet the definitions for a "purchase" or "sale" in Exchange Act Sections 3(a)(13) and (14). The Commission has previously noted that if the material terms of an SBS are amended or modified during its life based on an exercise of discretion and not through predetermined criteria or a predetermined self-executing formula, the Commission views the amended or modified SBS as a new SBS. *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453, 77 FR 48207 at 48286 (Aug. 13, 2012). The Commission considers such amendments or modifications to an SBS based on the exercise of discretion to result in the purchase and sale of a new SBS. The Commission has also previously noted that its business conduct rules generally will not apply to amendments or modifications to a pre-existing SBS unless the amendment or modification results in a new SBS. *See* Business Conduct Adopting Release, 81 FR at 29969. For example, the Commission has stated that the business conduct rules generally will not apply to either a full or partial termination of a pre-existing SBS. *Id.* The trade acknowledgment rule, however, applies to any transaction that is a purchase or sale of an SBS, even if the amendment or modification based on the exercise of discretion does not result in a new SBS. Thus, for example, an SBS Entity must provide a trade acknowledgment for a full termination (if prior to the scheduled maturity date) or a partial termination.

The Commission is not adopting the commenter's suggested requirement for SBS Entities to have written policies and procedures reasonably designed to ensure confirmation with non-SBS Entities by the next business day after the swap transaction is executed.[147] The Commission expects that SBS Entities may enter transactions with unregistered counterparties with varying levels of sophistication and different compliance procedures, which may require different amounts of time to respond to trade acknowledgments. The Commission notes, however, that policies and procedures reasonably designed to ensure prompt verification of a transaction may include policies and procedures under which the SBS Entity relies on its counterparty's negative affirmation to the terms of a trade acknowledgment. The Commission understands that Swap Entities commonly use negative affirmation to reduce the legal uncertainty that might otherwise occur if a counterparty were to fail to verify a trade acknowledgment in a timely manner. The Commission generally would consider negative affirmation policies and procedures reasonable if they require that the SBS Entity's counterparty agree to be bound by negative affirmation before or at the time of execution of the SBS transaction and if the policies and procedures provide adequate time after the counterparty receives the trade acknowledgment to dispute its terms or otherwise respond to the trade acknowledgment. Further, the policies and procedures generally should require the SBS Entity to document its counterparty's agreement to rely on negative affirmation.

After further consideration, the Commission has determined not to adopt Rule 15Fi–1(e)(2) as proposed, which would have: (1) Required, in any transaction to be cleared by a clearing agency, an SBS Entity to comply with the verification process prescribed by the clearing agency; and (2) provided that compliance with the clearing agency's verification process in a transaction to be cleared would satisfy the SBS Entity's requirement to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the transaction. Instead, as discussed in Section II.G. below, the Commission is adopting an exception from Rule 15Fi–2 for SBS transactions submitted to, and accepted for, clearing at a registered clearing agency, which exception essentially would address more broadly the application of the proposed verification requirements to SBS transactions to be cleared.

Finally, we are adopting as proposed Rule 15Fi–1(e)(3), but re-designating it as Final Rule 15Fi–2(d)(2).

F. Exception for Clearing Transactions

Proposed Rule 15Fi–1(b) generally would have required an SBS Entity to provide a trade acknowledgment to its counterparty whenever it purchases or sells an SBS. "Purchase" is defined in the Exchange Act to include "any contract to buy, purchase, or otherwise acquire." [148] Sale is defined under the Exchange Act as "any contract to sell or otherwise dispose of." [149] "Purchase" and "sale" are each further defined, for purposes of an SBS, to include "the execution, termination (prior to its scheduled maturity date), assignment, exchange or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require." [150] Proposed Rule 15Fi–1(b) did not differentiate between cleared SBS and uncleared SBS. Accordingly, if an SBS Entity purchased a security-based swap from or sold a security-based swap to a clearing agency as part of a clearing transaction, proposed Rule 15Fi–1(b) would have required the SBS Entity to provide a trade acknowledgment to the clearing agency.

In the Proposing Release, the Commission asked whether clearing agencies should be permitted to provide trade acknowledgments on behalf of SBS Entities in transactions where the clearing agency was not responsible for clearing the transaction through a matching process, and if so, under what conditions.[151] One commenter suggested that an SBS Entity should be able to satisfy the rule's requirements merely by clearing the swap through a derivatives clearing organization, among other means.[152]

Upon consideration of the comment, for the reasons discussed below, the Commission believes that it is unnecessary to require an SBS Entity to comply with the trade acknowledgment and verification provisions of Rule 15Fi–2 when it is a counterparty to an SBS transaction with a clearing agency. Thus, we are providing in Rule 15Fi–2(e) as adopted that a security-based swap dealer or major security-based swap participant is excepted from the requirements of Rule 15Fi–2 with respect to any clearing transaction. For these purposes, Final Rule 15Fi–1(c) defines "clearing transaction" as a security-based swap that has a clearing agency as a direct counterparty,[153] and "clearing agency" as a clearing agency as defined in Section 3(a)(23) of the Exchange Act that is registered pursuant to Section 17A of the Exchange Act and provides central counterparty services for SBS transactions.

In the agency model of clearing which predominates in the United States, clearing transactions are new transactions created to replace a bilateral SBS transaction that was submitted to, and has been accepted for clearing by, a registered clearing agency, in which the clearing agency becomes the new direct counterparty to each of the counterparties of the original bilateral transaction. Therefore, these clearing transactions (known as the "beta" and "gamma") effectively mirror the original bilateral transaction (known as the "alpha") that was extinguished in the process of acceptance for clearing.[154] Because the final rules define "clearing transaction" to include only a transaction where the clearing agency is a counterparty to a trade, *e.g.*, beta and gamma transactions, the exception in Final Rule &15Fi–2(e) does not apply to the initial bilateral transaction, *i.e.*, the alpha transaction.[155] In the principal model, a clearing member would clear a security-based swap for a customer by becoming a direct counterparty to a transaction with the customer, and then would become a counterparty to an offsetting transaction with the clearing agency.[156] Thus, the transaction between the clearing member and the clearing agency would be a clearing transaction for purposes of this rule.

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[147] *Id.*

[148] Exchange Act Section 3(a)(13).

[149] Exchange Act Section 3(a)(14).

[150] Exchange Act Sections 3(a)(13) and (14).

[151] Proposing Release, 76 FR at 3863.

[152] ISDA I at 5.

[153] This is the same meaning as in Exchange Act Rule 900(g). Clearing transactions thus include, for example, any security-based swaps that arise if a registered clearing agency accepts a security-based swap for clearing, as well as any security-based swaps that arise as part of a clearing agency's internal processes, such as security-based swaps used to establish prices for cleared products and security-based swaps that result from netting other clearing transactions of the same product in the same account into an open position. *See* SBSR Adopting Release, *supra* note 49, 80 FR at 14599.

[154] If both direct counterparties to the alpha transaction are members of the clearing agency, the direct counterparties would submit the transaction to the clearing agency directly and the resulting beta transaction would be between the clearing agency and one clearing member, and the gamma transaction would be between the clearing agency and the other clearing member. The Commission understands, however, that if the direct counterparties to the alpha transaction are a clearing member and a non-clearing member (a "customer"), the customer's side of the trade would be submitted for clearing by a clearing member acting on behalf of the customer. When the clearing agency accepts the alpha transaction for clearing, one of the resulting transactions—in this case, assume the beta transaction—would be between the clearing agency and the customer, with the customer's clearing member acting as guarantor for the customer's trade. The other resulting transaction—the gamma transaction—would be between the clearing agency and the clearing member that was a direct counterparty to the alpha transaction. *See* SBSR Adopting Release, *supra* note 49, 80 FR 14563 at n. 292.

In each of the models discussed above, when the CCP is a counterparty to a transaction, the Commission observes that the rules, procedures, and processes of registered clearing agencies that provide central counterparty services for SBSs[157] are generally designed to ensure that the terms of SBS transactions submitted for clearing have been matched and confirmed prior to or at the same time the transaction is accepted by the registered clearing agency for clearing.[158] Thus, the Commission believes that it would be unnecessary and duplicative to require SBS Entities to comply with the requirements of Rule 15Fi–2 for clearing transactions, as it would result in essentially two processes, those of the CCP and those under the rule, to acknowledge and verify the same transaction. Therefore, paragraph (e) of Final Rule 15Fi–2 excepts an SBS Entity from the requirements of Rule 15Fi–2 with respect to clearing transactions.[159]

The Commission proposed to define "clearing agency" as "a clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1)," [160] but has adopted a final definition that differs from the proposed definition in two ways. First, the exception in the final rule is intended only for transactions with a clearing agency that provides services that would bring the person within the statutory definition of clearing agency.[161] Thus, for clarity, the final rule's definition of "clearing agency" is limited to a clearing agency as that term is defined in Section 3(a)(23) of the Exchange Act. Second, the final definition of clearing agency is further limited to a registered clearing agency that provides central counterparty services for SBS transactions. As discussed above, the Commission observes, through its ability to approve the rules and procedures of registered clearing agencies, and its ability to inspect the processes and operations of registered clearing agencies, that the rules, procedures, and processes of registered clearing agencies that provide central counterparty services for SBSs are generally designed so that the terms of SBS transactions submitted for clearing have been matched and confirmed prior to or at the same time the transaction is accepted by the registered clearing agency for clearing. Thus, the Commission is satisfied that registered clearing agencies that provide central counterparty services for SBSs have rules, procedures, and processes that will serve the purpose of the trade acknowledgment rule by providing the parties to the transaction with a record of their transaction. However, the Commission does not make this same observation about the rules, procedures, and processes of clearing agencies that are not registered and do not provide central counterparty services for SBS transactions, and thus it is not extending the exception to clearing agencies that are not registered or that do not provide central counterparty services for SBSs.

G. Exception for Transactions Executed on a Security-Based Swap Execution Facility or National Securities Exchange or Accepted for Clearing by a Clearing Agency

The trade acknowledgment and verification requirements in proposed Rules 15Fi–1(b) and (e) generally did not distinguish between transactions executed in the over-the-counter market or transactions executed on a security-based swap execution facility or a national securities exchange. Proposed Rule 15Fi–1(b) also did not distinguish between transactions that would be submitted for clearing at a clearing agency, and those that are not.[162] Proposed Rule 15Fi–1(e)(2) would have addressed SBS transactions to be cleared by a clearing agency, by: (1) Requiring, in any transaction to be cleared by a clearing agency, an SBS Entity to comply with the verification process prescribed by the clearing agency; and (2) providing that compliance with the clearing agency's verification process in a transaction to be cleared would satisfy the SBS Entity's requirement to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the transaction.

The Commission solicited comment on whether persons such as security-based swap execution facilities should be permitted to provide trade acknowledgments on behalf of SBS Entities.[163] Commenters disagreed on the trade acknowledgment requirements for transactions executed on an execution facility or cleared at a clearing agency. One commenter supported a rule that would be satisfied by executing an SBS on a swap execution facility or on a designated contract market, or by clearing the swap through a derivatives clearing organization.[164] The commenter noted that this approach was consistent with the CFTC's proposed rule.[165] Another commenter

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[155] The application of an exception from the trade acknowledgment and verification requirements for bilateral trades that are submitted to clearing is discussed further in Sections G.2 and G.3 below.

[156] *See* SBSR Adopting Release, *supra* note 49, 80 FR 14563 at n. 293.

[157] There are currently two clearing agencies registered with the Commission that provide central counterparty services for SBS transactions. The two clearing agencies are ICE Clear Credit LLC and ICE Clear Europe Limited.

[158] *See, e.g.*, ICE Clear Credit LLC Clearing Rule 305 (requiring that participants file with ICE Clear Credit LLC each business day confirmations covering trades made during the day that include certain information about the trade, and providing that, for authorized trade execution/processing platforms or other electronic systems that submit matched trades, the requirement that participants file a confirmation is satisfied by confirming reports that are automatically generated by the platform) and Rule 306 (providing that when a trade between two participants is submitted for clearing, if the trade confirmations submitted by the two participants do not match in all material respects, ICE Clear Credit LLC may reject the trade); *see also*, ICE Clear Europe Limited CDS Procedures, Section 4.4(c) and more generally the provisions included in Section 4 of the ICE Clear Europe Limited CDS Procedures.

[159] Final Rule 15Fi–2(e).

[160] *See* proposed Rule 15Fi–1(a)(3).

[161] Exchange Act Section 3(a)(23)(A) generally defines a clearing agency as "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certiificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates." Exchange Act Section 3(a)(23)(B) excepts certain persons from the definition of "clearing agency."

[162] Proposed Rule 15Fi–1(a) did, however, propose an exception related to the use of the matching services of a clearing agency, which is discussed separately in Section II.B.1 above.

[163] Proposing Release, 76 FR 3862–3.

[164] ISDA I at 5.

[165] *Id.* The CFTC Rule as adopted provides that any swap transaction executed on a swap execution facility or designated contract market shall be deemed to satisfy the requirements of the rule, provided that the rules of the swap execution facility or designated contract market establish that confirmation of all terms of the transaction shall take place at the same time as execution. 17 CFR 23.501(a)(4)(i). Furthermore, any swap transaction submitted for clearing by a derivatives clearing

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expressed concern that an execution facility would not typically have all of the data required to bilaterally confirm trades, either because it supports trading for standardized transactions, where for example common terms such as payment frequency are assumed at execution, or because it does not hold bilaterally specific terms, such as master confirmation agreement type and date.[166] In either case, the commenter stated that these terms would be added during the enrichment process, with the full transaction details later agreed through an affirmation or matching process.[167]

For the reasons discussed below and in response to comments, the Commission has determined to adopt an exception from the trade acknowledgment and verification requirements of Final Rule 15Fi–2 for transactions executed on registered SBSEFs and registered national securities exchanges, and for transactions submitted to, and accepted for, clearing at a registered clearing agency, subject to certain conditions. Specifically, Rule 15Fi–2(f)(1) as adopted provides that an SBS Entity is excepted from the requirements of the rule with respect to any SBS transaction executed on an SBSEF or national securities exchange, provided that the rules, procedures or processes of the SBSEF or national securities exchange provide for the acknowledgment and verification of all terms of the SBS transaction no later than the time required by paragraphs (b) and (d)(2) of Rule 15Fi–2. Rule 15Fi–2(f)(2) as adopted provides that an SBS Entity is excepted from the requirements of the rule with respect to any SBS transaction that is submitted for clearing to a clearing agency, provided that: (i) The SBS transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment under paragraph (b) of the rule; and (ii) the rules, procedures or processes of the clearing agency provide for the acknowledgment and verification[168] of all terms of the security-based swap transaction prior to or at the same time that the security-based swap transaction is accepted for clearing. Finally, Rule 15Fi–2(f)(3) as adopted provides that if an SBS Entity receives notice that an SBS transaction has not been acknowledged and verified pursuant to the rules, procedures or processes of an SBSEF or a national securities exchange, or accepted for clearing by a clearing agency (*e.g.,* if an alpha trade is not accepted for clearing), the SBS Entity shall comply with the requirements of the rule with respect to such SBS transaction as if such SBS transaction were executed at the time the SBS Entity receives such notice.

1. Exception for Transactions Executed on a Security-Based Swap Execution Facility or National Securities Exchange

As discussed above, the trade acknowledgment and verification rules being adopted today are designed to provide in a timely manner a definitive record of the contract terms to which the counterparties have agreed, thus providing legal certainty about the terms of their agreement in case those terms are later disputed, and serving to reduce operational risk. The Commission understands that there are existing execution facilities that, in connection with facilitating the execution of SBSs transactions on their platform also provide a mechanism that obtains the agreement of the counterparties to the terms of the executed SBS transaction. As suggested by a commenter,[169] the Commission believes that it is appropriate to provide an exception from the trade acknowledgment and verification requirements in the circumstances where the execution facility on which the SBS transaction is executed is essentially already providing the same service for an SBS transaction executed on its platform. The Commission believes that providing an exception for SBS transactions executed on an SBSEF or national securities exchange, provided that the rules, procedures or processes of the SBSEF or exchange provide for the acknowledgment and verification of all terms of the SBS no later than the time required by paragraphs (b) and (d)(2) of Rule 15Fi–2, will serve the intended purpose of the rule in a more efficient manner than if the rule were applied without the exception because SBS Entities will not need processes or systems to provide trade acknowledgments for transactions when execution on the SBSEF or national securities exchange provides the same result. Such an exception is also generally consistent with the CFTC Rule, as two commenters urged.[170] This consistency will permit SBS Entities that are also registered as Swap Entities to rely on executing a transaction on an SBSEF or national securities exchange to comply with the requirements of Rule 15Fi–2 in the same manner they may rely on execution on a swap execution facility or designated contract market for compliance with the CFTC Rule.

The Commission further believes that it is appropriate to require, as part of the exception, that the rules, procedures or processes of the SBSEF or national securities exchange provide for the acknowledgment and verification of all terms of the SBS no later than the time required by paragraphs (b) and (d)(2) of the rule. Otherwise, the Commission is concerned that SBS transactions executed on SBSEFs or national securities exchanges could end up not being acknowledged and verified either pursuant to the rules, procedures or processes of the SBSEF or the exchange, or pursuant to the requirements of this rule, for an extended period of time, which would undermine the objective of the rule to provide legal certainty as to the terms of SBS transactions in a timely manner.

As adopted, the exception applies to transactions executed on either a security-based swap execution facility or a national securities exchange. Final Rule 15Fi–1(f) defines the term "security-based swap execution facility" to mean a security-based swap execution facility as defined in Section 3(a)(77) of the Exchange Act[171] that is registered pursuant to Section 3D of the Exchange Act,[172] and Final Rule 15Fi–1(g) defines the term "national securities exchange" to mean an exchange as defined in Section 3(a)(1) of the Exchange Act[173] that is registered pursuant to Section 6 of the Exchange

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organization are deemed to satisfy the requirements of the rule, provided that: (A) The swap transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the times established for confirmation under the rule, and (B) confirmation of all terms of the transaction takes place at the same time as the swap transaction is accepted for clearing pursuant to the rules of the derivatives clearing organization. 17 CFR 23.501(a)(4)(ii). The CFTC Rule also requires a swap dealer or major swap participant to execute a confirmation for a swap transaction as soon as technologically practicable, but in any event no later than the times established for confirmation under the rule as if such swap transaction were executed at the time the swap dealer or major swap participant receives notice that a swap transaction has not been confirmed by a swap execution facility or a designated contract market, or accepted for clearing by a derivatives clearing organization. 17 CFR 23.501(a)(4)(iii).

[166] MarkitSERV at 5.

[167] *Id.*

[168] Clearing agencies' rules and/or procedures generally refer to "confirming" or "confirmation" of transactions rather than trade acknowledgment and verification, but as the Commission has noted, the process through which one counterparty acknowledges an SBS transaction and its counterparty verifies it, is the confirmation process. *See* Section I.A. above. Thus, clearing agency confirmation practices generally provide for the acknowledgment and verification of SBS transactions for purposes of this exception.

[169] *See* note 164, *supra.*

[170] MarkitSERV at 9; ISDA II at 3, 8.

[171] 15 U.S.C. 78c(a)(77).

[172] 15 U.S.C. 78c–4.

[173] 15 U.S.C. 78c(a)(1).

Act.[174] These definitions limit the exception in Final Rule 15Fi–2(f) to such organized platforms for the trading of SBSs that are registered with the Commission. The Commission believes that it is appropriate to impose this limitation, as those entities are subject to the Commission's oversight, which will help to ensure that the exception supports the objectives of Final Rule 15Fi–2 to promote timely and accurate documentation of SBS transactions. The Commission will be able to review the operations of these entities, in particular how the rules, procedures, and processes for providing the trade acknowledgments and obtaining verification operate in practice.[175]

SBS Entities executing transactions on organized trading platforms that are not registered with the Commission, such as a foreign organized trading platform that is not registered with the Commission, are not within the scope of this exception, for the reasons discussed above. In such cases, an SBS Entity retains the obligation to comply with the trade acknowledgment and verification requirements of Final Rule 15Fi–2 when executing a transaction on one of these alternative platforms. The Commission notes, however, that an SBS Entity may allow such an alternative platform to provide a trade acknowledgment on its behalf, but the SBS Entity would retain ultimate responsibility for its own compliance with the rule.[176]

The exception in Rule 15Fi–2(f)(1) as adopted also addresses one commenter's concern that SBSEFs may lack certain information necessary to confirm trades. Under the exception in Final Rule 15Fi–2(f)(1), an SBSEF or exchange's rules, procedures or processes must provide for the acknowledgment and verification of all the terms of an SBS transaction—which is the same content as is required by Final Rule 15Fi–2(c) for a trade acknowledgment provided by an SBS Entity. Thus, if the rules, procedures or processes of the SBSEF or exchange do not provide for the acknowledgment and verification of all terms of an SBS transaction no later than the time required by paragraphs (b) and (d)(2) of Rule 15Fi–2, the exception would not be available and an SBS Entity would itself be required to provide a trade acknowledgment for such transactions in compliance with Rule 15Fi–2.

2. Exception for Transactions Accepted for Clearing by a Clearing Agency

As noted above, the Commission is also adopting Final Rule 15Fi–2(f)(2), which provides an exception to the general requirements in Rule 15Fi–2 with respect to any SBS transaction that is submitted for clearing to a clearing agency, subject to certain conditions. In particular, the exception will apply only if: (A) The SBS transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment under Final Rule 15Fi–2(b); and (B) the rules, procedures or processes of the clearing agency provide for or require the acknowledgement and verification of all terms of the security-based swap transaction prior to or at the same time that the security-based swap transaction is accepted for clearing.[177] For the agency model of clearing, the exception in paragraph (f)(2) of Rule 15Fi–2 will apply to the initial bilateral transaction between two counterparties that they submit to clearing—the alpha transaction—provided that the conditions are satisfied.[178] For the principal model of clearing, this exception will not apply to the original bilateral transaction between the two counterparties, as that transaction is not submitted for clearing.

The rules, procedures, and processes of registered clearing agencies that provide central counterparty services for SBSs are generally designed to ensure that the terms of SBS transactions submitted for clearing have been matched and confirmed prior to or at the same time the transaction is accepted by the registered clearing agency for clearing. In particular, the rules, procedures, and processes of registered clearing agencies that offer central counterparty services for SBS are designed to ensure that the clearing agency will accept an SBS transaction for clearing only if it has been matched and confirmed prior to acceptance and processing by the registered clearing agency for clearing, either by an authorized execution or processing platform, through an inter-dealer broker, or through the clearing agency's own communications with the parties to the transaction.[179] The Commission therefore believes that it is unnecessary to require an SBS Entity to comply with the trade acknowledgment and verification requirements of Rule 15Fi–2 for SBS transactions that are submitted to clearing, in circumstances where the clearing agency's rules provide for the same result as those the rule is designed to achieve (subject to the conditions discussed).

The Commission also believes that it is appropriate to condition the exception on the requirement that the SBS transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment under Final Rule 15Fi–2(b). The Commission is concerned that otherwise such SBS transactions could end up not being acknowledged and verified either pursuant to the rules of the clearing agency, or pursuant to the requirements of this rule, for an extended period of time, which would undermine the objective of the rule to provide legal certainty as to the terms of SBS transactions in a timely manner.

As adopted, the exception applies to transactions submitted to and accepted for clearing by a registered clearing agency that performs central counterparty services for SBS transactions, subject to certain conditions. Final Rule 15Fi–1(b) defines the term "clearing agency" to mean a clearing agency as defined in Section 3(a)(23) of the Exchange Act that is registered pursuant to Section 17A of the Exchange Act and that provides central counterparty services for SBS transactions. For the reasons discussed in Section F above, this definition limits the exception in Final Rule 15Fi–2(f) to clearing agencies that are registered with the Commission.

3. Trade Acknowledgment and Verification After Notice That an SBSEF or Exchange Has Not Acknowledged and Verified a Transaction or That a Transaction Has Not Been Accepted for Clearing by a Clearing Agency

As discussed above, the exception in Final Rule 15Fi–2(f)(1) applies only to SBS transactions executed on an SBSEF or a national securities exchange where the rules, processes, or procedures of the execution facility provide for the acknowledgment and verification of all terms of the SBS no later than the time required by paragraphs (b) and (d)(2) of the rule. Likewise, the exception in Final Rule 15Fi–2(f)(2) applies only to SBS transactions that are timely submitted to clearing at a clearing agency where the rules of the clearing agency provide for or require the acknowledgment and verification of all terms of the security-based swap transaction prior to or at the same time that the security-based swap transaction is accepted for clearing. There might be instances even with respect to an SBSEF or national securities exchange that has such rules, procedures or processes, where an SBS Entity receives notice that an SBS transaction it executed on an SBSEF or a national securities exchange has not been acknowledged and verified. Similarly, there may be circumstances where an SBS submitted for clearing to a clearing agency is not accepted for clearing. In these circumstances, the Commission does not believe that the objectives of Rule 15Fi–2 would be satisfied unless the SBS Entity itself were to comply with the provisions of the rule, to help ensure that the SBS transaction is in fact acknowledged and verified. Thus, Rule 15Fi–2(f)(3) as adopted provides that, if an SBS Entity receives notice that an SBS transaction has not been acknowledged and verified pursuant to the rules, procedures or processes of an SBSEF or a national securities exchange, or accepted for clearing by a clearing agency, the SBS Entity shall comply with the requirements of Rule 15Fi–2 with respect to such SBS transaction as if such SBS transaction were executed at the time the SBS Entity receives such notice. This also makes clear how the timing requirements in paragraph (b) of Rule 15Fi–2 apply in these circumstances, where an SBS Entity would not know it has an obligation to provide a trade acknowledgment until it has received notice from the SBSEF or national securities exchange that the transaction has not been acknowledged and verified pursuant to its rules, procedures or processes, or notice from the clearing agency that the transaction has not been accepted for clearing.

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[174] 15 U.S.C. 78f.

[175] *See* Exchange Act Sec. 3D, 15 U.S.C. 78c–4 (statutory authority to oversee SBSEFs) and Registration and Regulation of Security-Based Swap Execution Facilities, Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (proposing rules to register and regulate SBSEFs); *see also* Exchange Act Section 6, 15 U.S.C. 78f and Exchange Act Section 19, 15 U.S.C. 78s (statutory authority to oversee national securities exchanges).

[176] *See* discussion of an SBS Entity relying on a third party to provide a trade acknowledgment on its behalf in Section II.B.3, *supra*.

[177] Clearing agency rules, processes, and procedures generally refer to "confirming" transaction data as opposed to "acknowledgment" and "verification," however, for purposes of Rule 15Fi–2(f)(2), the Commission is treating confirming transactions under these rules, processes, or procedures as equivalent to providing a trade acknowledgment and verifying it.

[178] In contrast, the exception in paragraph (e) of Rule 15Fi–2 as adopted will apply to the transactions that result once the clearing agency accepts the original bilateral transaction for clearing, namely the beta and gamma transactions to which the clearing agency is a counterparty. *See supra* Section II.F (discussing the exception for clearing transactions).

[179] *See* note 168 *supra*.

The Commission notes that whether a contract that has not been acknowledged and verified by the SBSEF or national securities exchange, or that has not been accepted for clearing by a clearing agency, continues to exist may depend on the rules of the SBSEF, national securities exchange, or those of the clearing agency, or the agreement of the counterparties. If the result is that the counterparties have executed an SBS transaction, then the SBS Entity would be required to comply with the requirements of Rule 15Fi–2 with respect to that transaction. To the extent that the result is that the parties have not executed an SBS transaction, or that the SBS transaction that was executed is now extinguished, then there is no SBS transaction for which it is necessary to comply with Rule 15Fi–2.

H. Exemption From Rule 10b–10

The Dodd-Frank Act amended the Exchange Act definition of "security" to include any "security-based swap."[180] Consequently, security-based swaps, as securities, are fully subject to the federal securities laws and regulations, including Rule 10b–10 under the Exchange Act.[181] Rule 10b–10 generally requires that broker-dealers effecting securities transactions on behalf of or with customers, provide to their customers, at or before completion of the securities transaction, a written notification containing certain basic transaction terms.[182] The Commission anticipates that some SBS Entities may also be registered broker-dealers. Therefore, in the absence of an exemption, an SBS Entity that is also a broker or dealer could be required to comply with both Rule 10b–10 and Rule 15Fi–2 with respect to the same transaction. This could be duplicative and overly burdensome. The Commission thus proposed paragraph (f) of Rule 15Fi–1, which would provide that an SBS Entity that is also a broker or dealer and that complies with the requirement to provide a trade acknowledgment as required by proposed Rule 15Fi–1(b) with respect to an SBS transaction is exempt from the requirements of Exchange Act Rule 10b–10[183] with respect to the SBS transaction.

The proposed exemption in paragraph (f) would have applied solely to transactions in SBS in which an SBS Entity is also a broker or a dealer, and would not have applied to a transaction by a broker-dealer that is not also an SBS Entity. In other words, a broker-dealer that is not an SBS Entity would continue to comply with Rule 10b–10 to the extent that it effects transactions in SBSs with customers.

The Commission did not receive any comments on the proposed exemption from Rule 10b–10 in proposed Rule 15Fi–1(f). In response to its July 2011 Exchange Act Exemptive Order[184] granting temporary exemptive relief from compliance with certain provisions of the Exchange Act that would have applied to SBS activities due to the expansion of the Exchange Act definition of "security" to include SBSs, the Commission received a comment letter that requested the Commission provide an exemption from Rule 10b–10 in connection with SBS transactions.[185] The commenter noted that we proposed to exempt registered broker-dealers from Rule 10b–10 if the broker complies with the confirmation requirements for SBSs that applies to SBS dealers. The commenter recommended that the Commission also exempt a broker from Rule 10b–10 with respect to its brokering activities, regardless of whether the broker is an SBS dealer.[186] The commenter suggested, when talking about certain categories of rules applicable to broker-dealers that include Rule 10b–10, that applying Rule 10b–10 would be unnecessary when applied to SBS dealing and brokering activities in light of the new SBS regulatory regime, and stated its view that broker-dealers that engage in SBS brokering activities should be exempt from pre-Dodd Frank provisions to the extent they comply with the corresponding SBS provisions that apply to SBS dealers.[187]

The Commission continues to believe that an exemption from Rule 10b–10 is appropriate to avoid potentially duplicative and overly burdensome documentation requirements on security-based swap transactions and thus it is adopting the exemption substantially as proposed but re-designated as Final Rule 15Fi–2(g) and with changes as noted below.[188]

As noted in Section B.1 above, because the rule applies solely to an SBS Entity that "purchases" or "sells" an SBS, it is effectively limited to principal transactions in which the SBS Entity is a counterparty to the transaction and is acting for its own account. Thus, the exemption from Rule

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[180] Pub. L. 111–203, 124 Stat. 1376, 1755 Dodd-Frank Act Sec. 761(a)(2) (codified at Exchange Act Section 15 U.S.C. 78c 3(a)(10) (2010)).

[181] 17 CFR 240.10b–10.

[182] Examples of transaction terms included on a rule 10b–10 confirmation include: the date of the transaction; the identity, price, and number of shares bought or sold; the capacity of the broker-dealer; the dollar or yield at which a transaction in a debt security was effected, and under specified circumstances, the compensation paid to the broker-dealer by the customer or other parties. *Id.*

[183] 17 CFR 240.10b–10.

[184] *See* note 189, *infra*.

[185] Securities Industry and Financial Markets Association, dated Dec. 5, 2011 ("SIFMA") at 5 (available at *http://www.sec.gov/comments/s7-27-11/s72711-10.pdf*).

[186] *Id.*

[187] *Id.* at 2–3.

[188] *See* Final Rule 15Fi–2(g).

10b–10 as proposed in Rule 15Fi–1(f) and as adopted in paragraph (g) of Rule 15Fi–2 applies solely to principal transactions. Final Rule 15Fi–2(g) has been modified from the proposal to make explicit that the exemption from Rule 10b–10 applies only when the SBS Entity is purchasing from or selling to a counterparty (*i.e.*, an SBS Entity is acting as principal for its own account in a security-based swap transaction). The Commission recognizes that some SBS Entities may also engage in SBS brokerage or agency transactions. Any broker acting as an agent in an SBS transaction, regardless of whether it is also registered as an SBS Entity, would continue to be required to comply with Rule 10b–10.[189] Regarding the comment recommending that a broker that complies with the SBS confirmation rule with respect to its brokering activity in SBSs be exempt from Rule 10b–10, the Commission believes such an exemption is unnecessary because the trade acknowledgment and verification requirements adopted today in Rule 15Fi–2 are designed for, and only apply to, principal transactions by an SBS dealer. The rule as adopted today thus does not apply to brokerage or agency transactions, which are different in structure and involve different activity by a broker than principal transactions by an SBS dealer. In contrast, Rule 10b–10 applies to both principal and agency transactions, and contains required disclosures specifically for when a broker-dealer is acting as agent.[190] Since Rule 15Fi–2 does not require a trade acknowledgment for an SBS Entity's brokerage or agency transactions, and therefore compliance with Rule 15Fi–2 would not result in any duplication of efforts by the SBS Entity effecting the brokerage or agency transaction, the Commission does not believe that there is a need to provide an exemption from providing a confirmation under Rule 10b–10 for an SBS Entity's brokerage or agency transactions.

The Commission also is changing the exemption in Final Rule 15Fi–2(g) to clarify that an SBS Entity that is also a broker or dealer may rely on the exemption from Rule 10b–10 if it complies with either paragraph (a) or (d)(2) of Final Rule 15Fi–2. This change makes it clear that the exemption is also available to an SBS Entity that receives a trade acknowledgment from its counterparty to an SBS and timely verifies or disputes the terms of the trade acknowledgment in compliance with the rule. The proposed exemption in Rule 15F–1(f) from Rule 10b–10 would have applied only to an SBS Entity that sent a trade acknowledgment. The Commission recognizes, however, that an SBS Entity that is also a broker-dealer and that receives a trade acknowledgment pursuant to Rule 15Fi–2 from its counterparty to the SBS may nevertheless have an independent obligation under Rule 10b–10 to send that counterparty a confirmation. The Commission believes that not exempting the SBS Entity that receives and responds to the trade acknowledgment from the requirement to send its counterparty a confirmation for the same transaction raises the same potentially duplicative and overly burdensome documentation requirements on security-based swap transactions if both Rules 10b–10 and 15Fi–2 were to apply to the same transactions. Thus, the Commission believes that it is appropriate to provide an exemption from Rule 10b–10 in this situation to avoid duplicative and overly burdensome documentation requirements on security-based swap transactions.

III. Cross-Border Application of Trade Acknowledgment and Verification Requirements

A. Proposed Application

In the Cross-Border Proposing Release, the Commission preliminarily interpreted the Title VII requirements associated with registration to apply generally to the activities of registered entities.[191] In reaching that preliminary conclusion, the Commission did not concur with the views of certain commenters that the Title VII requirements should not apply to the foreign security-based swap activities of registered entities, stating that such a view could be difficult to reconcile with, among other things, the statutory language describing the requirements applicable to security-based swap dealers.[192]

Implementing those principles, the Commission preliminarily identified the statutory provision related to documentation standards—which in part requires the Commission to adopt rules governing documentation standards for SBS Entities—as addressing entity-level requirements relating to the security-based swap dealer as a whole, rather than requirements specifically applicable to particular transactions,[193] and the Commission accordingly proposed to apply the entity-level requirements on a firm-wide basis to address risks to the security-based swap dealer as a whole.[194] The Commission similarly expressed the preliminary view that major security-based swap participants should be required to adhere to the entity-level requirements.[195]

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[189] On July 1, 2011, the Commission issued an order granting temporary exemptive relief from compliance with certain provisions of the Exchange Act that would have applied to SBS activities due to the expansion of the Exchange Act definition of "security" to include SBSs. Subject to certain conditions, the order provided temporary exemptions (including from Exchange Act Rule 10b–10 relating to the confirmation of securities transactions) in connection with SBS activity by certain eligible contract participants (as defined in section 1a of the Commodity Exchange Act) and registered broker-dealers. *See* Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of "Security" to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011) ("Exchange Act Exemptive Order"). The Exchange Act Exemptive Order also provided that pursuant to section 36 of the Exchange Act, until such time as the underlying exemptive relief expires, no contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of section 29(b) of the Exchange Act because any person that is a party to the contract violated a provision of the Exchange Act for which the Commission provided exemptive relief in the Exchange Act Exemptive Order. On February 5, 2014, the Commission extended the expiration date for the temporary exemption relating to Exchange Act Rule 10b–10 until the earliest compliance date set forth in any final rules regarding trade acknowledgment and verification of SBS transactions. *See* Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of "Security" to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 71485 (Feb. 5, 2014), 79 FR at 7734 (Feb. 10, 2014). With the adoption of this Final Rule, the exemption from Exchange Act Rule 10b–10 provided for in the Exchange Act Exemptive Order, as well as the related exemption from Section 29(b) with respect to Rule 10b–10, will expire upon the compliance date of Rule 15Fi–2, which is discussed further in Section V.A. below.

[190] *See* Rule 10b–10(a)(2)(i).

[191] *See* Cross-Border Proposing Release, 78 FR at 30986 ("We are proposing to apply the Title VII requirements associated with registration (including, among others, capital and margin requirements and external business conduct requirements) to the activities of registered entities to the extent we have determined that doing so advances the purposes of Title VII." (footnotes omitted)).

[192] *See id.* at 30986 ("Although some commenters suggested that a territorial approach would prohibit the Commission from applying Title VII to the foreign security-based swap activities of even registered entities, such an interpretation of the application of Title VII to registered entities is difficult to reconcile with the statutory language describing the requirements applicable to registered security-based swap dealers, with the text of Section 30(c), or with the purposes of Title VII and the nature of risks in the security-based swap market as described above. We have long taken the view that an entity that has registered with the Commission subjects itself to the entire regulatory system governing such registered entities.").

[193] *See id.* at 31013 (addressing the documentation standard requirements of Exchange Act Section 15F(i) in conjunction with other risk management requirements applicable to registered security-based swap dealers); *see generally id.* at 31009–16 (comparing entity-level and transaction-level requirements generally).

[194] *See id.* at 31011.

The Commission did not propose any exception from the application of the entity-level requirements to security-based swap dealers.[196] The Commission, however, has adopted rule amendments to provide exceptions from the business conduct requirements under Exchange Act Section 15F(h)—other than supervision requirements pursuant to Exchange Act Section 15F(h)(1)(B)—for security-based swap dealers and major security-based swap participants in connection with certain foreign security-based swap activity.[197]

B. Commenter Views

Certain commenters expressed views challenging the proposed cross-border scope of the trade acknowledgment and verification requirements. In particular, one commenter expressed the view that these requirements (as well as certain other Title VII requirements) should be deemed to be transaction-level requirements, and that their cross-border application should differ depending on the type of counterparty in question.[198] A commenter to the Proposing Release stated the view that when practices imposed on U.S. entities are more burdensome than corresponding practices in other jurisdictions, those practices should apply only to U.S. customer business.[199]

One commenter generally urged us to follow cross-border approaches that are similar to those taken by the CFTC.[200] The CFTC has taken a different position with regard to corresponding requirements pursuant to the CEA.[201]

C. Response to Comments and Final Interpretation

The Commission continues to believe that the trade acknowledgment and verification requirements are entity-level requirements that apply to a security-based swap dealer's or a major security-based swap participant's business with foreign counterparties to the same extent that they apply to the dealer's or major participant's U.S. business.[202] This scope is consistent with Exchange Act Section 15F(i), which provides that each registered security-based swap dealer and major security-based swap participant "shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps." [203]

In reaching this conclusion, the Commission is persuaded that the trade acknowledgment and verification requirements play an important role in addressing risks to the security-based swap dealer and the major security-based swap participant as a whole, including risks related to the entity's financial stability. In this regard, we have taken into account commenter views that these requirements should be deemed to be transaction-level requirements, and that their cross-border application should differ depending on the type of counterparty in question,[204] and that when practices imposed on U.S. entities are more burdensome than corresponding practices in other jurisdictions, those practices should apply only to U.S. customer business.[205] We further recognize that the CFTC has taken a different position with regard to corresponding requirements pursuant to the CEA, and have considered commenter views urging us to follow cross-border approaches similar to those taken by the CFTC.[206]

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[195] *See id.* at 31035.

[196] "The Commission preliminarily believes that entity-level requirements are core requirements of the Commission's responsibility to ensure the safety and soundness of registered security-based swap dealers. The Commission preliminarily believes that it would not be consistent with this mandate to provide a blanket exclusion to foreign security-based swap dealers from entity-level requirements applicable to such entities." *Id.* at 31024 (footnotes omitted). The Commission further expressed the preliminary view that concerns regarding the application of entity-level requirements to foreign security-based swap dealers would largely be addressed through the proposed approach to substituted compliance. *See id.*

[197] In part, U.S. and non-U.S. security-based swap dealers have been excepted from application of those business conduct standards to their "foreign business." *See* Exchange Act Rule 3a71–3(a)(8), (a)(9), (c) (excepting foreign dealers in connection with any transaction with a non-U.S. counterparty that does not involve certain activities in the U.S., or any transaction with a U.S. counterparty that is a transaction through that counterparty's foreign branch; also excepting U.S. dealers in connection with any transaction through the dealer's foreign branch with a non-U.S. counterparty or with a U.S. counterparty that is conducted through that counterparty's foreign branch); *see also* Business Conduct Adopting Release, 81 FR at 30065–69.

U.S. and non-U.S. major security-based swap participants also have been excepted from those business conduct standards with respect to certain foreign activities. *See* Exchange Act Rule 3a67–10(d) (excepting foreign major participants in connection with any transaction with a non-U.S. counterparty and any transaction with a U.S. counterparty that is a transaction through that counterparty's foreign branch; also excepting U.S. major participants in connection with any transactions conducted through a foreign branch with a non-U.S. counterparty or with a U.S.-person counterparty that constitutes a transaction through the counterparty's foreign branch); *see also* Business Conduct Adopting Release, 81 FR at 30069.

[198] *See* SIFMA/FSR/FIA Letter at A22–23 (stating in relevant part that confirmation requirements should be considered to be transaction-level requirements, and that the application of such requirements should depend on the circumstances of a particular security-based swap including the status of the counterparty; also citing CFTC cross-border guidance which identifies those requirements as being transaction-level).

[199] *See* ISDA Letter (Feb. 22, 2011) at 8 ("In the interests of maintaining the competitiveness of U.S. markets and U.S. SBS Entities, we believe that to the extent practices imposed on U.S. SBS Entities are different from and more burdensome than those imposed on equivalent entities in other jurisdictions, those practices should apply to U.S. customer business only. As we have stated previously, it is essential that U.S. regulations not hamper the overseas activities of U.S. SBS Entities. Nor should non-U.S. entities find access to the U.S. markets impaired.").

[200] *See, e.g.,* CDEU Letter at 2 ("Conflicting regulatory regimes will lead to an inefficient financial system, increasing compliance costs without securing any further reductions in systemic risks. Accordingly, the SEC's proposed application and rules relating to the cross-border application of Title VII should ensure that such rules will not conflict with the guidance adopted by the CFTC. The SEC should also work closely with the CFTC when determining whether substituted compliance is applicable with respect to a particular jurisdiction.").

[201] Under the CFTC's cross-border guidance, trade confirmation requirements pursuant to CEA section 4s(i) are considered to be "Category A" transaction-level requirements. *See* CFTC, *"Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations,"* 78 FR 45292, 45335 (July 26, 2013). In contrast to the Commission's approach with regard to security-based swaps (which would apply those requirements to the entirety of registered security-based swap dealers' security-based swap businesses, with the availability of substituted compliance for non-U.S. dealers), under the CFTC's guidance such Category A transaction-level swap requirements:

(a) Generally appear not to apply to a non-U.S. swap dealer's transaction with a non-U.S. counterparty (other than a guaranteed or conduit affiliate). *See id.* at 45352–53 (stating that "generally there may be a relatively greater supervisory interest on the part of foreign regulators with respect to transactions between two counterparties that are non-U.S. persons so that application of the Category A Transaction-Level Requirements may not be warranted.").

(b) Generally appear to apply to a non-U.S. swap dealer's transactions with U.S. counterparties (other than foreign branches of U.S. banks) without the availability of substituted compliance, with the proviso that such a non-U.S. dealer would be deemed in compliance with the relevant Dodd-Frank requirements "where it complies with requirements in its home jurisdiction that are essentially identical to the Dodd-Frank requirements." *See id.* at 45353.

(c) Generally appear to apply to the transactions of a swap dealer that is a foreign branch of a U.S. bank, but with substituted compliance available for the foreign branch's transactions with non-U.S. counterparties. *See id.* at 45350–51 (noting "the interests of foreign regulators in applying their transaction-level requirements to a swap taking place in their jurisdiction" along with the fact that foreign branches "are subject generally to direct or indirect oversight by U.S. regulators because they are part of a U.S. person"). Substituted compliance generally would not be available for that foreign branch's transactions with U.S. counterparties, unless the counterparty also is a foreign branch. *See id.* at 45350 (noting the CFTC's "strong supervisory interests in entities that are part of or extensions of" U.S. swap dealers).

[202] *See* note 192, *supra* (Cross-Border Proposing Release noted our longstanding view that "an entity that has registered with the Commission subjects itself to the entire regulatory system governing such registered entities").

[203] 15 U.S.C. 78o–10(i).

[204] *See* note 198, *supra.*

[205] *See* note 199, *supra.*

We believe it is especially significant that, as we previously recognized, if an SBS transaction "is not reduced to writing, a court may have to supply contract terms upon which there was no previous agreement," and prudent practice requires that "the parties document the transaction in a complete and definitive written record so there is legal certainty about the terms of the agreement in case those terms are later disputed." [207] The GAO further has recognized that "[h]aving unconfirmed trades could allow errors to go undetected that might subsequently lead to losses and other problems," and that the associated operational risks "have the potential to contribute to broader market problems." [208] As a result, an alternative approach that does not require a registered entity to take steps to reduce the terms of a transaction to writing and take steps to help detect any errors could be expected to contribute to operational risk and legal uncertainty. Those risks would impact the entity's business as a whole, and not merely specific security-based swap transactions. Because those risks may raise questions regarding the validity—and even the existence—of outstanding security-based swaps, those risks may also hinder the settlement process and lead to instability within the broader security-based swap market. Accordingly, the Commission believes that it is appropriate to apply these trade acknowledgment and verification requirements to the entirety of a security-based swap dealer's and major security-based swap participant's security-based swap business.[209]

In sum, we believe that the considerations discussed above support the conclusion that an alternative approach—whereby the trade acknowledgment and verification requirements are applied only to transactions involving U.S. counterparties (and/or transactions connected with dealing activity in the U.S.)—could lead to operational risk and legal uncertainty, which would impact the registered entity as well as its counterparties. For those reasons, we conclude that for purposes of the Exchange Act, the trade acknowledgment and verification requirements are entity-level requirements that are applicable to the entirety of a registered dealer's and major participant's security-based swap business.[210]

IV. Availability of Substituted Compliance for Trade Acknowledgment and Verification Requirements

A. Existing Substituted Compliance Rule

Earlier this year, the Commission adopted Exchange Act Rule 3a71–6 to provide that non-U.S. SBS Entities could satisfy applicable business conduct requirements under Section 15F by complying with comparable regulatory requirements of a foreign jurisdiction, subject to certain conditions. The rule in part provides that the Commission shall not make a determination providing for substituted compliance unless the Commission determines, among other things, that the foreign regulatory requirements are comparable to otherwise applicable requirements.[211] In adopting that substituted compliance rule, the Commission addressed a range of issues and concerns that commenters had raised in response to the substituted compliance proposal that was set forth in the Cross-Border Proposing Release.

When the Commission adopted a substituted compliance rule that solely addressed the business conduct requirements, it stated that it expected to assess the potential availability of substituted compliance in connection with other requirements when the Commission considers final rules to implement those requirements.[212]

B. Response to Comments and Final Rule

The Commission is amending Exchange Act rule 3a71–6 to provide SBS Entities that are not U.S. persons with the potential to avail themselves of substituted compliance to satisfy the Title VII trade acknowledgment and verification requirements. In amending the rule, the Commission concludes that the principles associated with substituted compliance for the business conduct requirements in large part should similarly apply to the trade acknowledgment and verification requirements. Accordingly, except as discussed below, the revised substituted compliance rule applies to the trade acknowledgment requirements in the same manner as it applies to the business conduct requirements.[213]

1. Basis for Substituted Compliance in Connection With the Trade Acknowledgment and Verification Requirements

In light of the global nature of the security-based swap market and the prevalence of cross-border transactions within that market, there is the potential that the application of the Title VII trade acknowledgment and verification requirements may lead to requirements that are duplicative of or in conflict with applicable foreign requirements, even when the two sets of requirements implement similar goals and lead to similar results. Those results have the potential to disrupt existing business relationships, and, more generally, to reduce competition and market efficiency.[214]

To address those effects, the Commission concludes that under certain circumstances it may be appropriate to allow for the possibility of substituted compliance whereby market participants may satisfy the trade acknowledgment and verification requirements by complying with comparable foreign requirements. Allowing for the possibility of substituted compliance in this manner may be expected to help achieve the benefits of the trade acknowledgment and verification requirements—helping to curb legal uncertainty and operational risk to participants in security-based swap transactions and in the broader market—in a way that helps avoid regulatory duplication or conflict and hence promotes market efficiency, enhances competition and facilitates a well-functioning global security-based swap market. Accordingly, paragraph (d) of the rule has been revised to identify the trade acknowledgment and verification requirements of Title VII as being potentially eligible for substituted compliance.[215]

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[206] *See* notes 200 and 201, *supra*.

[207] *See* Proposing Release, 76 FR at 3860.

[208] *See* GAO Confirmation Report, *supra* note 9, at 15. The GAO further noted: "Errors could be made at any time—for example, counterparties could miscommunicate when making a trade or dealers could enter the wrong trade data into their systems. If such errors go undetected, a dealer could make an incorrect premium payment to a counterparty or inaccurately measure and manage risk exposures, notably market and counterparty credit risks. Similarly, errors could lead to legal disputes between a dealer and a counterparty if a credit event triggered a contract settlement." *Id.*

[209] Given the role of trade acknowledgment and verification practices in helping avoid disputes regarding the existence and terms of security-based swaps, and so in helping to avoid risks to market participants, the entity-level nature of the associated requirements may be distinguished from certain transaction-level business conduct rules that the Commission previously adopted related to recommendations, communications and disclosures. *See* Business Conduct Adopting Release, 81 FR at 30065–69 (addressing business conduct standards described in Exchange Act Section 15F(h) and underlying rules and regulations).

[210] Concerns regarding the application of such entity-level requirements in connection with foreign activities further may be addressed through the potential availability of substituted compliance. *See* note 196, *supra*.

[211] *See* Business Conduct Adopting Release, 81 FR at 30074.

[212] As proposed, substituted compliance potentially would have been available in connection with the requirements applicable to security-based swap dealers pursuant to Exchange Act Section 15F, other than the registration requirements applicable to dealers. Because the trade acknowledgment and verification requirements being adopted today are grounded in Section 15F, substituted compliance generally would have been available for those requirements under the proposal.

[213] The discussions in the Business Conduct Adopting Release, including those regarding consideration of supervisory and enforcement practices (*see id.* at 30079), regarding certain multi-jurisdictional issues (*see id.* at 30079–80), and regarding application procedures (*see id.* at 30080–81) are applicable to the trade acknowledgment and verification requirements.

[214] *See generally* Business Conduct Adopting Release, 81 FR at 30073–74 (addressing basis for making substituted compliance available in the context of the business conduct requirements).

2. Comparability Criteria, and Consideration of Related Requirements

As discussed when we adopted Exchange Act rule 3a71–6, the Commission will endeavor to take a holistic approach in determining the comparability of foreign requirements for substituted compliance purposes, focusing on regulatory outcomes as a whole rather than on requirement-by-requirement similarity.[216] The Commission's comparability assessments associated with the trade acknowledgment and verification rules accordingly will consider whether, in the Commission's view, the foreign regulatory system achieves regulatory outcomes that are comparable to the regulatory outcomes associated with those Exchange Act requirements.

In response to commenter requests for guidance regarding criteria that the Commission will consider as it assesses comparability,[217] the final rule provides that prior to making a substituted compliance determination in connection with the trade acknowledgment and verification requirements, the Commission intends to consider whether the information that is required to be provided pursuant to the requirements of the foreign financial regulatory system, and the manner and timeframe by which that information must be provided, are comparable to those required pursuant to the applicable Exchange Act provisions.[218]

In application, the Commission may determine to conduct its comparability analyses regarding the trade acknowledgment and verification requirements in conjunction with comparability analyses regarding other Exchange Act requirements that, like the trade acknowledgment and verification requirements, promote risk management in connection with security-based swap dealers and major security-based swap participants. Accordingly, depending on the applicable facts and circumstances, the comparability assessment associated with the trade acknowledgment and verification requirements may constitute part of a broader assessment of the foreign regulatory system's risk mitigation requirements, and the applicable comparability assessments may be conducted at the level of those risk mitigation requirements as a whole.

V. Effective and Compliance Dates

As addressed below, Rules 15Fi–1 and 15Fi–2 being adopted today will be effective 60 days following publication in the **Federal Register** and will have a compliance date that is the same as the compliance date of the SBS Entity registration rules. If any provision of Rules 15Fi–1 and 15Fi–2, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

A. Trade Acknowledgment and Verification Rule

Final Rules 15Fi–1 and 15Fi–2 will be effective 60 days from the date of the publication of those rules in the **Federal Register**.

However, the Commission notes that only registered SBS Entities must conform to the standards of Final Rules 15Fi–1 and 15Fi–2. Thus, SBS Entities will not be required to comply with Final Rules 15Fi–1 and 15Fi–2 until they are registered. Therefore, the Commission is adopting a compliance date for Final Rules 15Fi–1 and 15Fi–2 that is the same as the compliance date of the SBS Entity registration rules, which is the later of: Six months after the date of publication in the **Federal Register** of a final rule release adopting rules establishing capital, margin and segregation requirements for SBS Entities; the compliance date of final rules establishing recordkeeping and reporting requirements for SBS Entities; the compliance date of final rules establishing business conduct requirements under Exchange Act Sections 15F(h) and 15F(k); or the compliance date for final rules establishing a process for a registered SBS Entity to make an application to the Commission to allow an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS Entity's behalf.[219] This timing should provide SBS Entities ample time to review the final trade acknowledgment and verification rules and determine how they will comply.

Two commenters suggested that we should implement the trade acknowledgment rule in phases.[220] One suggested that the trade acknowledgment requirements should be "both phased and aspirational" because it may only become "workable in the years to come." [221] This commenter suggested that the Commission engage in an ongoing dialogue with the leaders of the SBS industry to tighten the trade acknowledgment timeframe over an extended period.[222] The other commenter suggested that the suggested phases could be based, for example, upon the complexity of products or the average time to confirm similar transactions.[223] Otherwise, the commenter speculated that "premature implementation" could cause unspecified "adverse market consequences." [224]

At this time, the Commission is not adopting a phased-in compliance schedule or adopting timing requirements that tighten over time. The Commission believes the compliance date of Final Rules 15Fi–1 and 15Fi–2 is sufficient for SBS Entities to come into full compliance because: (1) The subset of SBS Entities that are also swap dealers or major swap participants have been required to comply with the CFTC Rule since 2014,[225] which suggests that compliance with the Commission's substantially similar Final Rules should not pose novel compliance challenges for SBS Entities that are also swap dealers or major swap participants; (2) as discussed in the prior paragraph, no SBS Entity will be required to comply with the Final Rules until they are registered, and the requirement to register will not arise until the future point when the Commission has adopted certain other enumerated SBS rules; and (3) the timing requirement adopted in paragraph (b) of the Rule 15Fi–2 as compared to the proposed rule should ease SBS Entities' challenges meeting their compliance obligations when the rule does come into force. Thus, the Commission believes that the rule as adopted effectively addresses the concerns underlying the suggestion for a phased-in approach.

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[215] Paragraph (a)(1) of the rule provides that the Commission may, conditionally or unconditionally, by order, make a determination with respect to a foreign financial regulatory system that compliance with specified requirements under the that foreign financial system by a security-based swap dealer and/or by a registered major security-based swap participant, or class thereof, may satisfy the corresponding requirements identified in paragraph (d) of the rule that would otherwise apply.

[216] *See* Business Conduct Adopting Release, 81 FR at 30078–79.

[217] *See id.*

[218] *See* Exchange Act Rule 3a71–6(d)(2)(i).

[219] *See* Registration Process for Securities-Based Swap Dealers and Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964 (Aug. 14, 2015).

[220] ISDA I at 5; MarkitSERV at 2, 11.

[221] ISDA I at 5.

[222] *Id.* at 6.

[223] MarkitSERV at 11.

[224] *Id.*

[225] The CFTC Rule contained a phased implementation schedule, which provided that Swap Entities would have additional time to provide a trade acknowledgment or confirm a transaction, as applicable, depending on the asset class of the swap. The implementation schedule required full compliance with the rule's timing requirements for all transactions in all asset classes executed after August 31, 2014. For a full discussion of the phased compliance schedule, *see* 77 FR at 55941.

B. Substituted Compliance Rule

The effective date of these amendments to Exchange Act Rule 3a71–6 will be 60 days following publication in the **Federal Register**.

Earlier this year, when the Commission adopted Rule 3a71–6 to provide for substituted compliance in conjunction with the final rules associated with the business conduct requirements, the Commission stated that the effective date of the substituted compliance rule would be 60 days following publication in the **Federal Register**. The Commission further stated that there would be no separate compliance date in connection with the substituted compliance rule because the rule did not impose obligations upon entities separate and apart from the underlying business conduct requirements. The Commission added that security-based swap dealers and major security-based swap participants would not be required to comply with those requirements until they are registered.[226]

The same principles apply to this amendment to the substituted compliance rule, as security-based swap dealers and major security-based swap participants will not be required to comply with the underlying trade acknowledgment and verification requirements until they are registered. Accordingly, there will be no separate compliance date for the substituted compliance rule. As we noted in connection with the business conduct requirements, the Commission would consider substituted compliance requests that are submitted prior to the compliance date for the entity registration requirements.[227]

VI. Paperwork Reduction Act

A. Introduction

The Paperwork Reduction Act of 1995 ("PRA")[228] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any "collection of information."[229] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In addition, 44 U.S.C. 3507(a)(1)(D) provides that before adopting (or revising) a collection of information requirement, an agency must, among other things, publish a notice in the **Federal Register** stating that the agency has submitted the proposed collection of information to the Office of Management and Budget ("OMB") and setting forth certain required information, including (1) a title for the collection of information; (2) a summary of the collection of information; (3) a brief description of the need for the information and the proposed use of the information; (4) a description of the likely respondents and proposed frequency of response to the collection of information; (5) an estimate of the paperwork burden that shall result from the collection of information; and (6) notice that comments may be submitted to the agency and director of OMB.[230]

Final Rule 15Fi–2 and Rule 3a71–6 contain "collection of information requirements" within the meaning of the PRA. Final Rule 15Fi–1 defines relevant terms and is not a "collection of information."

B. Rule 15Fi–2

In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted proposed Rule 15Fi–1 to OMB for review. The title of the new information collection will be "Rule 15Fi–2—Trade Acknowledgment and Verification of Security-Based Swap Transactions." Compliance with the collection of information requirements is mandatory. The OMB has assigned control number 3235–0713 to the new collection of information.

In the proposing release, the Commission solicited comment on the collection of information requirements and the accuracy of the Commission's statements. As discussed more fully above in Section I.A., the Commission received seven comments in total on the proposed rule. One commenter raised an issue with the Commission's estimate of the cost for each SBS Entity to develop an internal order and trade management systems ("OMS"), and is addressed below.

1. Summary of Collection of Information

As discussed above, Exchange Act Section 15F(i)(1) provides that SBS Entities "shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps."[231] Section 15F(i)(2) of the Exchange Act further provides that the Commission must adopt rules governing documentation standards for SBS Entities. Accordingly, the Final Rules provide documentation standards for the timely and accurate acknowledgment and verification of SBS transactions by SBS Entities. Rule 15Fi–1 contains definitions of the relevant terms. Rule 15Fi–2 contains seven paragraphs: (a) The trade acknowledgment obligations of specific SBS Entities; (b) the prescribed time frames under which a trade acknowledgment must be sent; (c) the form and content requirements of the trade acknowledgment; (d) SBS Entities' verification obligations; (e) a limited exception from the requirement to provide a clearing agency a trade acknowledgment in a clearing transaction, (f) a limited exception from the requirement to provide a trade acknowledgment for certain transactions executed on a security-based swap execution facility or a national securities exchange or accepted for clearing by a clearing agency; and (g) a limited exemption from the requirements of Exchange Act Rule 10b–10[232] for a broker-dealer acting as principal for its own account in a security-based swap transaction.

Under paragraph (a) of Rule 15Fi–2, sending an SBS trade acknowledgment is the obligation of a particular SBS Entity (*i.e.*, an SBS dealer or major-SBS participant) depending on whether the SBS Entity and its counterparty are SBS dealers or major SBS participants and/or in accordance with any agreements between the counterparties that delineate the trade acknowledgment responsibility.

Paragraph (b) of Rule 15Fi–2 requires trade acknowledgments to be provided promptly, but in no event later than the end of the first business day following the day of execution.[233] Paragraph (c) of Rule 15Fi–2 requires trade acknowledgments to be provided through electronic means that provide reasonable assurance of delivery and must disclose all the terms of the security-based swap transaction.[234] Paragraph (d)(1) of Rule 15Fi–2 requires SBS Entities to establish, maintain, and enforce policies and procedures reasonably designed to obtain prompt verification of SBS trade acknowledgments. Regardless of the method of transmittal, when an SBS Entity receives a trade acknowledgment, pursuant to paragraph (d)(2) of the rule, it must promptly verify the accuracy of the trade acknowledgment or dispute the terms with its counterparty.

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[226] *See* Business Conduct Adopting Release, 81 FR at 30082.

[227] *See id.*

[228] 44 U.S.C. 3501 *et seq.*

[229] 44 U.S.C. 3502(3).

[230] 44 U.S.C. 3507(a)(1)(D) (internal formatting omitted); *see also* 5 CFR 1320.5(a)(1)(iv).

[231] 15 U.S.C. 78*o*–8.

[232] 17 CFR 240.10b–10.

Paragraphs (e), (f), and (g) of Final Rule 15Fi–2 are exemptive provisions and are not a collection of information.

2. Proposed Use of Information

The trade acknowledgment and verification requirements of Rule 15Fi–2 apply to both types of SBS Entities depending on whether the entity and its counterparty are SBS dealers or major SBS participants and on any agreements between the counterparties addressing the obligation to send a trade acknowledgment. Generally, the transaction details that must be provided in a trade acknowledgment serve as a written record by which the counterparties to a transaction memorialize the terms of a transaction. In effect, the trade acknowledgment reflects the contract entered into between the counterparties. In addition, the rule's verification requirements are intended to ensure that the written record of the transaction (*i.e.*, the trade acknowledgment) accurately reflects the terms of the transaction as understood by the respective counterparties. In situations in which an SBS Entity is provided a trade acknowledgment that is not an accurate reflection of the agreement, Rule 15Fi–2 requires the SBS Entity to dispute the terms of the transaction.

3. Respondents

Rule 15Fi–2 applies only to SBS Entities, that is, to SBS dealers and major SBS participants, both of which will be registered with the Commission. In the Proposing Release the Commission stated its belief that approximately 50 entities may meet the definition of SBS dealer, and up to five entities may meet the definition of major SBS participant. We received no comments on these estimates and continue to believe they are appropriate. Thus, approximately 55 entities may be required to register with the Commission as SBS Entities and thus, would be subject to the trade acknowledgment and verification requirements of Rule 15Fi–2.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Pursuant to Rule 15Fi–2, all SBS transactions must be acknowledged and verified through the methods and by the timeframes prescribed in the rule. Collectively, paragraphs (a), (b), (c), and (d) of Rule 15Fi–2 identify the information to be included in a trade acknowledgment; the party responsible for sending the trade acknowledgment; the permissible methods for sending the trade acknowledgment; and criteria for verifying the terms of a trade acknowledgment. In 2015, there were 2,436,531 single-name credit default swap ("CDS") transactions reported to the DTCC Derivatives Repository Limited Trade Information Warehouse ("TIW").[235] For purposes of this analysis, we assume there were approximately 2.44 million single-name CDS transactions in 2015. In addition, although we lack comprehensive data on equity swaps and other security-based swaps, we have estimated in prior rulemakings that single-name CDS represent approximately 82% of the total SBS market. This implies that there are an additional 540,000 transactions, or approximately 2.98 million total SBS transactions. Assuming that at least one SBS Entity is a party to every SBS transaction, the Commission estimates that the number of SBS transactions subject to Rule 15Fi–2 would be approximately 54,182 transactions per SBS Entity per year.[236]

The Commission believes that most transactions will be electronically executed and cleared through the facilities of a clearing agency. The Commission understands that the clearing of SBS transactions through the facilities of a clearing agency generally includes the matching and verification of such transactions. The Commission has taken this process into account in paragraph (e) of Rule 15Fi–2, which excepts SBS Entities from the obligation to provide a trade acknowledgment in clearing transactions. The Commission estimates that of the approximately 2.98 million SBS transactions estimated per year based on the 2015 data, approximately 1.32 million will be clearing transactions excepted from the trade acknowledgment requirement pursuant to paragraph (e) of Rule 15Fi–2. Of the remaining 1.66 million transactions, approximately 75%, or 1.25 million, will be transactions executed on an SBSEF or exchange and thus excepted from the trade acknowledgment requirement pursuant to the exception for in paragraph (f) of Rule 15Fi–2. Thus, we estimate that SBS Entities will have to provide approximately 0.41 million trade acknowledgments pursuant to Final Rule 15Fi–2.

In the Proposing Release, the Commission stated its assumption that most SBS Entities do not currently have the platforms necessary for processing, acknowledging, and verifying SBS transactions electronically, whether internally or by transmitting the necessary data packages to the facilities of a clearing agency for processing. Therefore, the Commission believed that SBS Entities will have to develop OMSs connected or linked to the facilities of a clearing agency and able to process SBS transactions internally if necessary.[237] One commenter agreed that appropriate platforms and processes will need to be developed by the industry, but did not indicate how many SBS Entities will need to develop OMSs or how much they will cost, although the commenter did state that the estimate in the proposing release was too low.[238]

Based on our staff's discussions with industry participants and incorporated in our other rulemaking related to the Dodd-Frank Act,[239] the Commission preliminarily estimated that the development of an OMS for electronic processing of SBS transactions with the capabilities described above would impose a one-time aggregate burden of approximately 19,525 hours, or 355 burden hours per SBS Entity.[240] This estimate assumes that SBS Entities will not have to develop an entirely new OMS but rather would leverage existing trading and processing platforms and adapt those systems to satisfy the functionalities described above. In addition, the Commission further estimated that Rule 15Fi–2 would impose an ongoing annual hour burden of approximately 23,980 hours or 436 hours per SBS Entity.[241] This estimate includes day-to-day technical support of the OMS, as well as the amortized annual burden associated with system or platform upgrades and periodic implementation of significant updates based on new technology, products, or both.

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[233] Rule 15Fi–2(b).

[234] *See* Rule 15Fi–2(c); *see also* discussion in Section II.D. *supra.*

[235] See Part VII.B.1 below for additional details.

[236] This figure is based on the following: (2,980,000 estimated SBS transactions)/(55 SBS Entities) = 54,182 SBS transactions per SBS Entity per year. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[237] The Commission believes that systems for acknowledging and verifying SBS transactions will likely be an additional functionality of an OMS that SBS Entities will have to use to report SBS transactions to an SBS data repository. *See* SBSR Proposing Release, *supra* note 31.

[238] ISDA I at 8.

[239] *See* Proposing Release, 76 FR at 3869.

[240] This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Sr. Programmer at 160 hours) + (Sr. Systems Analyst at 160 hours) + (Compliance Manager at 10 hours) + (Director of Compliance at 5 hours) + (Compliance Attorney at 20 hours)) x 55 (SBS Entities)] = 19,525 burden hours at 355 hours per SBS Entity. The Commission understands that many SBS Entities may already have computerized systems in place for electronically processing SBS transactions, whether

In addition, pursuant to paragraph (d)(1) of Rule 15Fi–2, SBS Entities must establish, maintain, and enforce written policies and procedures reasonably designed to obtain prompt verification of transaction terms. While the burden of these policies and procedures will vary, the Commission estimates that policies and procedures would require an average of 80 hours per respondent to initially prepare and implement, with a total initial burden of 4,400 hours for all respondents.[242] Once these policies and procedures are established, the Commission estimates that it will take an average of 40 hours annually to maintain these policies and procedures per respondent, with a total estimated average annual burden of 2,200 hours for all respondents.[243]

The Commission received one comment on the estimated cost associated with the burden of developing an OMS. That commenter wrote that the estimated cost very seriously underestimated the actual cost, but provided no specific cost estimates.[244] The commenter subsequently stated to Commission staff that SBS Entities have now developed OMSs to comply with the CFTC Rule, and the cost of modifying the OMSs to comply with the Commission rule will depend on how closely aligned the Commission rule is to the CFTC Rule.[245] Since the rule the Commission is adopting is much more closely aligned with the CFTC Rule than the proposed rule was, we believe our original estimates do not underestimate the actual cost of the rule as adopted. Therefore, in light of our decision to much more closely align the Commission rule with the CFTC Rule, we believe our estimates remain appropriate.

5. Retention Period of Recordkeeping Requirements

Pursuant to amendments to the Exchange Act from Title VII of the Dodd-Frank Act, the Commission has adopted separate rules for SBS transactions that include, among other things, transaction reporting requirements.[246] The Commission has proposed additional recordkeeping and reporting rules as well.[247] Because a trade acknowledgment will serve as a written record of the transaction, the information required by Rule 15Fi–2 will be required to be maintained by an SBS Entity subject to the proposed rules, if adopted. These requirements are subject to separate PRA submissions under those rulemakings.

6. Collection of Information is Mandatory

Each collection of information discussed above is a mandatory collection of information.

7. Confidentiality

By its terms, information collected pursuant to Rule 15Fi–2 will not be available to the public. Under other Commission rules, however, some of the information required to be included in a trade acknowledgment, as described in paragraph (c) of Rule 15Fi–2, will be otherwise publicly available. In particular, under Regulation SBSR,[248] SBS Entities are required to report certain SBS transaction details to an SBS data repository that will, in turn, publicly disseminate SBS transaction data. To the extent, however, that the Commission receives confidential information pursuant to this collection of information that is otherwise not publicly available, that information will be kept confidential, subject to applicable law.

C. Rule 3a71–6

The amendment to Rule 3a71–6 that we are adopting today amends an existing collection of information.[249] A title and control number already exists for Rule 3a71–6—OMB control number 3235–0715 for "Rule 3a71–6 Substituted Compliance for Foreign Security-Based Swap Entities"—and the Commission will use that control number 3235–0715 for this amended collection of information.

In the Cross Border Proposing Release, the Commission solicited comment on the collection of information requirements and the accuracy of the Commission's statements. The Commission received no comments on the proposed information collection requirements.

1. Summary of Collection of Information

Rule 3a71–6, as amended, permits security-based swap entities to comply with the Title VII trade acknowledgment and verification requirements by following the comparable regulatory requirements of a foreign jurisdiction. The availability of substituted compliance would be predicated on a determination by the Commission that the relevant foreign requirements are comparable to the requirements that otherwise would be applicable, taking into account the scope and objectives of the relevant foreign requirements,[250] and the effectiveness of supervision and enforcement under the foreign regulatory system.[251] The availability of substituted compliance further would be predicated on there being a supervisory and enforcement MOU or other arrangement between the Commission and the relevant foreign authority addressing oversight and supervision under the substituted compliance determination.[252]

Requests for substituted compliance may come from parties or groups of

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internally or through a clearing agency. This may result in lesser burdens for those parties.

[241] This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Sr. Programmer at 32 hours) + (Sr. Systems Analyst at 32 hours) + (Compliance Manager at 60 hours) + (Compliance Clerk at 240 hours) + (Director of Compliance at 24 hours) + (Compliance Attorney at 48 hours)) x (55 SBS Entities)] = 23,980 burden hours, or 436 hours per SBS Entity.

[242] This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Compliance Attorney at 40 hours) + (Director of Compliance at 20 hours) + (Deputy General Counsel at 20 hours)) x (55 SBS Entities)] = 4,400 burden hours, or 80 hours per SBS Entity.

[243] This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Compliance Attorney at 20 hours) + (Director of Compliance at 10 hours) + (General Counsel at 10 hours)) x (55 SBS Entities)] = 2,200 burden hours, or 40 hours per SBS Entity.

[244] ISDA I at 8.

[245] Memorandum from the Division of Trading and Markets regarding a March 4, 2016, conference call with representatives of ISDA.

[246] *See* SBSR Adopting Release, *supra* note 49.

[247] *See* SBS Books and Records Proposing Release, *supra* note 128.

[248] *See* SBSR Adopting Release, *supra* note 49.

[249] *See* Business Conduct Adopting Release, 81 FR at 30082 (addressing collection of information in connection with adoption of substituted compliance rule for business conduct requirements).

[250] In the specific context of substituted compliance for the trade acknowledgment and verification requirements, prior to making any comparability determination the Commission intends to consider whether the information that is required to be provided to counterparties pursuant to the foreign financial regulatory system's rules is comparable to what Rule 15Fi–2 requires, and that the foreign system's rules require trade acknowledgment and verification in a manner and timeframe comparable to what Rule 15Fi–2 requires. *See* Exchange Act Rule 3a71–6(d)(3).

[251] *See* Exchange Act Rule 3a71–6(a)(2)(i).

[252] *See* Exchange Act Rule 3a71–6(a)(2)(ii).

parties that may rely on substituted compliance, or from foreign financial authorities supervising such persons' security-based swap activities.[253] Under the final rule, the Commission would make any determinations with regard to the trade acknowledgment and verification requirements, rather than on a firm-by-firm basis. Once the Commission has made a substituted compliance determination, other similarly situated market participants would be able to rely on that determination to the extent applicable and subject to any corresponding conditions. Accordingly, the Commission expects that requests for a substituted compliance determination would be made only where an entity seeks to rely on particular requirements of a foreign jurisdiction that have not previously been the subject of a substituted compliance request. The Commission believes that this approach would substantially reduce the burden associated with requesting substituted compliance determinations for an entity that relies on a previously issued determination, and, therefore, complying with the Commission's rules and regulations more generally.

As provided by Exchange Act Rule 0–13, which the Commission adopted in 2014, applications for substituted compliance determinations in connection with these requirements must be accompanied by supporting documentation necessary for the Commission to make the determination, including information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor and enforce compliance with such rules, and to cite to and discuss applicable precedent.[254]

2. Proposed Use of Information

The Commission would use the information collected pursuant to Exchange Act Rule 3a71–6 to evaluate requests for substituted compliance with respect to the trade acknowledgment and verification requirements applicable to security-based swap entities. The requests for substituted compliance determinations are required when a person seeks a substituted compliance determination.

Consistent with Exchange Act Rule 0–13(h), the Commission will publish in the **Federal Register** a notice that that a complete application has been submitted, and provide the public the opportunity to submit to the Commission any information that relates to the Commission action requested in the application.

3. Respondents

Under the final rule, applications for substituted compliance in connection with the trade acknowledgment and verification requirements may be filed by foreign financial authorities, or by non-U.S. security-based swap dealers or major security-based swap participants. Consistent with prior estimates, the Commission staff expects that there may be approximately 22 non-U.S. entities that may potentially register as security-based swap dealers, out of approximately 50 total entities that may register as security-based swap dealers.[255] Potentially, all such non-U.S. security-based swap dealers, or some subset thereof, may seek to rely on substituted compliance in connection with these trade acknowledgment and verification requirements.[256]

In practice, the Commission expects that the greater portion of any such requests will be submitted by foreign financial authorities, given their expertise in connection with the relevant substantive requirements, and in connection with their supervisory and enforcement oversight with regard to security-based swap dealers and their activities.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Rule 3a71–6 under the Exchange Act would require submission of certain information to the Commission to the extent security-based swap dealers or major security-based swap participants elect to request a substituted compliance determination with respect to the Title VII trade acknowledgment and verification requirements. Consistent with Exchange Act Rule 0–13, such applications must be accompanied by supporting documentation necessary for the Commission to make the determination, including information regarding applicable foreign requirements, and the methods used by foreign authorities to monitor and enforce compliance.

The Commission expects that registered security-based swap dealers and major security-based swap participants will seek to rely on substituted compliance upon registration, and that it is likely that the majority of such requests will be made during the first year following the effective date. Requests would not be necessary with regard to applicable rules and regulations of a foreign jurisdiction that have previously been the subject of a substituted compliance determination in connection with the applicable rules.

As we previously discussed in the context of substituted compliance for the business conduct requirements, the Commission expects that the great majority of substituted compliance applications will be submitted by foreign authorities, and that very few substituted compliance requests will come from security-based swap dealers or major security-based swap participants. For purposes of this assessment, the Commission estimates that three such security-based swap entities will submit such applications in connection with the trade acknowledgment and verification requirements.[257] The Commission estimates that the total paperwork burden incurred by such entities associated with preparing and submitting a request for a substituted compliance determination in connection with the trade acknowledgment and verification requirements will be approximately 240 hours, plus $240,000 for the services of outside professionals for all three requests.[258]

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[253] *See* Exchange Act Rule 3a71–6(c)(1). Such parties or groups of parties may make requests only if each such party is directly supervised by the foreign financial authority. *See* Exchange Act Rule 3a71–6(c)(2).

[254] *See* Exchange Act Rule 0–13(e).

[255] *See* "Application of the Title VII Security-Based Swap Dealer De Minimis Counting Requirements to Activity in the United States," Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598, 8605 (Feb. 19, 2016) ("U.S. Activity Adopting Release"); *see also* Business Conduct Adopting Release, 81 FR at 30090.

[256] Consistent with prior estimates, the Commission staff further believes that there may be zero to five major security-based swap participants. *See* Registration Adopting Release, 80 FR at 49000; *see also* Business Conduct Adopting Release, 81 FR at 30090 n.1526. It is possible that some subset of those entities will be non-U.S. major security-based swap participants that will seek to rely on substituted compliance in connection with the trade acknowledgment and verification requirements.

[257] *See* Business Conduct Adopting Release, 81 FR at 30097.

[258] In the Business Conduct Adopting Release, the Commission stated that consistent with the per-request estimates in the Cross-Border Proposing Release, the Commission estimates that the paperwork burden associated with making each such substituted compliance request would be approximately 80 hours of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside time * 400). *See* Business Conduct Adopting Release, 81 FR at 30097 n.1583; *see also* Cross-Border Proposing Release, 78 FR at 31110.

In the Business Conduct Adopting Release, the Commission further stated that in practice those amounts may overestimate the costs of requests pursuant to Rule 3a71–6 as adopted, as such requests would solely address the business conduct requirements, rather than the broader proposed scope of substituted compliance set forth in the Cross-Border Proposing Release. *See* Business

5. Collection of Information Is Mandatory

The application for substituted compliance is mandatory for all foreign financial authorities or security-based swap dealers or major security-based swap participants that seek a substituted compliance determination.

6. Confidentiality

The Commission generally will make requests for substituted compliance determination public, subject to requests for confidential treatment being submitted pursuant to any applicable provisions governing confidentiality under the Exchange Act.[259]

VII. Economic Analysis

A. Introduction

The Commission is adopting final rules under Sections 15F(i)(1) and 15F(i)(2) of the Exchange Act to prescribe standards to provide for timely and accurate confirmation of SBS transactions. The security-based swap market experienced substantial growth in the years prior to the financial crisis; in single-name CDS alone, global notional grew from $5.1 trillion outstanding in 2004 to a peak of $33.4 trillion outstanding in mid-2008, a six-fold increase. Multi-name CDS, which may include both SEC-regulated security-based swaps and CFTC-regulated swaps, grew from $1.3 trillion global notional outstanding in 2004 to a peak of $25.8 trillion outstanding at year-end 2007.[260] During this period of growth, as highlighted by the Government Accountability Office ("GAO") Confirmation Report, the credit derivatives industry experienced an unprecedented increase in the backlog of unconfirmed trades, reaching 153,860 unconfirmed trades by the end of September 2005, including 97,650 confirmations outstanding more than 30 days.[261] The GAO viewed the lack of automation and the purported assignment of positions by transferring parties to third parties without notice to their counterparties as the primary factors contributing to this backlog.[262] The GAO also found that if new transactions are left unconfirmed, there is no definitive written record of the contract terms. Thus, in the event of a dispute, the terms of the agreement must be reconstructed from other evidence, such as email trails or recorded trader conversations. The GAO noted that this process is cumbersome and may not be wholly accurate.

Unlike most other securities transactions, a security-based swap gives rise to ongoing obligations between transaction counterparties during the life of the transaction, including payments contingent on specific events, such as a corporate default. Consequently, confirmation of the terms of an SBS transaction is essential for SBS Entities to effectively measure and manage market and credit risk. In addition, unconfirmed trade assignments could create a situation where a market participant has incorrect information about the identity of its counterparty, impairing the proper measurement and management of credit risk, and potentially placing the participant's financial stability at risk. Finally, a backlog of unconfirmed trades could hinder the settlement process, particularly if errors go undetected or a counterparty disputes the terms of a transaction. In the case of a credit event involving a reference entity with a large notional outstanding and many counterparties, breakdowns in the settlement process that result from unconfirmed trades could lead to broader market instability.

In light of the potential for inefficient risk management and breakdowns in the settlement process, the Federal Reserve Bank of New York initiated a joint regulatory initiative with other regulators in September 2005 to reduce the outstanding backlog of unconfirmed trades. Under this initiative, U.S. and foreign regulators worked with the 14 major credit derivative dealers to reduce the outstanding backlog of unconfirmed trades.[263] Specific details of the joint regulatory initiative included increasing the use of electronic trade confirmations systems, a protocol for ending unilateral trade assignments, improvements in the settlement process around credit events, and establishment of an electronic trade repository to record and store the terms of all credit derivative transactions. As a result of these efforts, by October 2006, the backlog of unconfirmed trades had fallen to 37,306, a 76% decrease, while the backlog of confirmations outstanding more than 30 days had fallen to 5,558, a 94% decrease.

The need for regulatory coordination to reduce the confirmations backlog highlights a fundamental economic consideration: Though all market participants would benefit from a reduction in unconfirmed trades and the associated market, credit, and settlement risks, no one participant had the ability or incentive to unilaterally take steps to reduce the backlog.[264] Indeed, strategic and competitive considerations among dealers may have contributed to the backlog. According to the GAO Confirmation Report, a major contributing factor to the backlog of unconfirmed trades was the increasing use of unilateral trade assignments.[265] Because assignments are typically less expensive than terminations for hedge funds and other end users, these market participants prefer to transact with dealers that will accept unilateral assignments. Furthermore, assignees are likely to be other dealers. The security-based swap market is a concentrated market, with a small number of dealers responsible for the vast majority of transaction volume. Dealers in this interconnected network rely on each other as counterparties to share and hedge risks associated with lending and other financial intermediation activities. Because assignees are typically counterparties with whom dealers have ongoing financial relationships and are

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Conduct Adopting Release, 81 FR at 30097 n.1583. To the extent that a security-based swap dealer submits substituted compliance requests in connection with both the business conduct requirements and the trade acknowledgment and verification requirements, the Commission believes that the paperwork burden associated with the requests would be greater than that associated with a narrower request, given the need for more information regarding the comparability of the relevant rules and the adequacy of the associated supervision and enforcement practices. In the Commission's view, however, the burden associated with such a combined request would not exceed the prior estimate.

[259] *See* Cross-Border Definitions Adopting Release, 79 FR at 47359 (discussing confidentiality provisions under the Exchange Act).

[260] Source: BIS, available at *http://www.bis.org/statistics/derstats.htm*.

[261] GAO Confirmation Report at 11. Note that this backlog includes both single-name CDS (SBS) and index CDS (swaps)

[262] Several factors reduced the risk of unconfirmed trades due to unilateral assignment, including: (1) The tendency for end-users to assign contracts to dealers who were generally more credit-worthy than the end-user; (2) dealers refusing to release posted collateral until the dealer verified the assignment, and; (3) a novation protocol in the ISDA Master Agreement that required counterparties to obtain the written consent of their counterparties before assigning a trade. *Id.* at 17–18.

[263] Regulatory representatives from the OCC, SEC, FSA, German Financial Supervisory Authority, and the Swiss Federal Banking Commission attended the initial meeting in September 2005. The participating dealers were Bank of America, Barclays Capital, Bear Stearns, Citigroup, Credit Suisse First Boston, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Lehman Brothers, Merrill Lynch, Morgan Stanley, UBS, and Wachovia. Source: GAO–07–716.

[264] A situation where all market participants would collectively benefit from a certain action—in this case, steps to reduce the backlog of unconfirmed trades—but where no one participant has the incentive to unilaterally take action is commonly known as a "collective action problem."

[265] According to the report, while assignments accounted for only 13% of dealing activity in September 2005, they accounted for 40% of the unconfirmed backlog outstanding for more than 30 days.

readily familiar, they are less likely to object to unilateral assignments than if the assignee were an unknown credit risk.

The final trade acknowledgment and verification rules are designed to prevent a recurrence of confirmation backlogs that developed during the growth of the credit derivatives market. Although the factors that led to the backlog are not present today, the Commission believes that codifying existing practices may help to prevent a recurrence. More specifically, we note that current practices with respect to security-based swaps that developed out of the joint regulatory initiative are voluntary.[266] Individual dealers facing financial distress, such as a liquidity crunch or cash flow problems, may have incentives to deviate from current practice if, for example, extending dispute periods or delaying confirmation allows a distressed dealer to conserve cash or other financial resources. In addition, the agreement that developed out of the joint regulatory initiative may not cover all market participants that will register with the Commission as SBS Entities. Therefore, we believe that the final trade acknowledgment and verification rules will reduce the likelihood of a recurrence of the confirmation backlog, as well as the market, credit, and settlement risks that accompany a backlog.

In adopting final rules covering trade acknowledgment and verification of security-based swap transactions, we are mindful of the costs imposed by and the benefits obtained from our rules. Section 3(f) of the Exchange Act provides that whenever the Commission is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[267] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[268] Exchange Act Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The discussion below addresses the potential economic effects of the final trade acknowledgment and verification rules, including the likely benefits and costs of the rules and their potential impact on efficiency, competition, and capital formation.

B. Economic Baseline

To assess the economic impact of the final trade acknowledgment and verification rules, we are using as our baseline the security-based swap market as it exists at this time, including applicable rules we have already adopted but excluding rules that we have proposed but not yet finalized.[269] The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act, as well as rules adopted in the Intermediary Definitions Adopting Release,[270] the Cross-Border Adopting Release,[271] and the Registration Adopting Release.[272] These foundational rules establish a population of registered entities required to comply with the trade acknowledgment and verification requirements, and therefore establish the overall scope of our final rules.[273] Our understanding of the market is informed by available data on security-based swap transactions, though we acknowledge the data limit the extent to which we can quantitatively characterize the market. Because these data do not cover the entire market, we have developed an understanding of market activity using a sample that includes only certain portions of the market.

Furthermore, the overall Title VII regulatory framework will have consequences for the transaction activity addressed by these final rules. For example, the final trade confirmation rules include an exception for transactions where the direct counterparty to the trade is a registered clearing agency. Therefore, the scope of future mandatory clearing requirements may affect the overall level of SBS activity subject to the final rules, and therefore the overall costs borne by registered SBS Entities. Similarly, the scope of future mandatory trade execution requirements will affect the volume of transactions that take place on swap execution facilities and other trading platforms; such transactions also have an available exception, which may further reduce the overall trade confirmation costs borne by registered SBS Entities.

1. Available Data on Security-Based Swaps

Our understanding of the security-based swap market is informed in part by available data on security-based swap transactions, though we acknowledge that limitations in the data limit the extent to which we can quantitatively characterize the market. Because these data do not cover the entire market, we have developed an understanding of market activity using a sample of transactions data that includes only certain portions of the market. We believe, however, that the data underlying our analysis here provide reasonably comprehensive information regarding single-name CDS transactions and the composition of participants in the single-name CDS market.

Specifically, our analysis of the state of the current security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse ("DTCC–TIW,"), especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2015. According to data published by the Bank for International Settlements ("BIS"), the global notional amount outstanding in equity forwards and swaps as of June 2015 was $2.80 trillion. The notional amount outstanding in single-name CDS was approximately $8.21 trillion, in multi-name index CDS was approximately $6.91 trillion, and in multi-name, non-index CDS was approximately $482 billion.[274]

Our analysis here focuses on the data relating to single-name CDS. As the BIS figures show (and as we have previously noted), although the definition of security-based swap is not limited to single-name CDS, single-name CDS contracts make up a majority of security-based swaps, and we believe that the single-name CDS data are sufficiently representative of the market and therefore can directly inform the analysis of the state of the current security-based swap market.[275] We note that the data available to us from TIW do not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties;[276] and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, we believe that the TIW data provide sufficient information to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.[277]

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[266] The backlog of unconfirmed credit derivative transactions that developed prior to the financial crisis encompassed both CFTC-regulated swaps and SEC-regulated security-based swaps. The CFTC has promulgated final rules with respect to trade confirmations of swaps; while the joint regulatory initiative covered both swaps and security-based swaps, only practices with respect to security-based swaps remain voluntary.

[267] 15 U.S.C. 78c(f).

[268] 15 U.S.C. 78w(a)(2).

[269] We also considered, where appropriate, the impact of rules and technical standards promulgated by other regulators, such as the CFTC and the European Securities and Markets Authority, on practices in the security-based swap market.

[270] 77 FR 30596 (May 23, 2012).

[271] 79 FR 47277 (August 12, 2014).

[272] 80 FR 48963 (August 14, 2015).

[273] In addition, in Regulation SBSR, the Commission has also adopted final reporting and public dissemination rules under Title VII. These and forthcoming substantive requirements of Title VII may affect how firms structure their security-based swap business and market practices more generally, which could have additional implications for the scope of final trade confirmation rules. If SBS Entities operating globally are able to structure their business along jurisdictional lines, greater or fewer transactions may be covered by final trade confirmation rules, depending on whether entities move business in or out of the Title VII framework.

[274] *See* Semi-annual OTC derivatives statistics at June 2015, Tables D8 and D10.1, available at *http://www.bis.org/statistics/d8.pdf* and *http://www.bis.org/statistics/d10_1.pdf* (accessed February 9, 2016).

2. Current Security-Based Swap Market

In 2015, there were 2,436,531 single-name CDS transactions reported to TIW, of which 1,080,716 were transactions with a clearing agency as a counterparty.[278] Currently, SBS transactions are negotiated and executed bilaterally, typically with a dealer as one of the counterparties. Indeed, based on our analysis of TIW data, 84.1% of single-name CDS transactions between 2006 and 2015, as measured by number of transaction-sides, were executed by ISDA-recognized dealers, and greater than 50% of transactions are between two ISDA-recognized dealers.[279]

Further analysis of the data reveals that approximately half of all trading activity in North American single-name CDS between 2008 and 2015 was between counterparties domiciled in the United States and counterparties domiciled abroad. Using the self-reported registered office location of the TIW accounts as proxy for domicile, the Commission estimates that only 12 percent of the global transaction notional volume between 2008 and 2015 was between two U.S.-domiciled counterparties, compared to 48 percent entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 40 percent entered into between two foreign-domiciled counterparties.[280]

When the domicile of TIW accounts is instead defined according to the domicile of an account holder's ultimate parents, headquarters, or home offices (*e.g.*, classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 33 percent, and to 52 percent for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty.

3. Current Estimates of Number of SBS Dealers and Major SBS Participants

Under the final rules, registered SBS Entities will be required to provide trade acknowledgments to their counterparties, and will also be required to have policies and procedures in place reasonably designed to ensure prompt receipt of trade verifications from their counterparties. In addition, when receiving a trade acknowledgment from another entity, registered SBS Entities will be required to promptly verify or dispute the terms of a trade acknowledgment with its counterparty. The Commission recently adopted final registration requirements for SBS Entities[281] and expects market participants meeting the registration thresholds outlined in the Intermediary Definitions and Cross-Border Adopting Releases to register with the Commission once substantive Title VII requirements that trigger registration compliance are adopted. We anticipate that 50 entities meeting registration thresholds for SBS dealers will seek to register with the Commission.

As noted in the U.S. Activity Adopting Release, based on an analysis of TIW data, out of more than 4,000 entities engaged in single-name CDS activity worldwide in 2015, 104 entities engaged in relevant single-name CDS activity at a sufficiently high level that they would be expected to incur assessment costs to determine whether they meet the "security-based swap dealer" definition.[282] Approximately 47 of these entities are non-U.S. persons. Analysis of those data further indicated that potentially 50 entities may engage in dealing activity that would exceed the *de minimis* threshold, and thus ultimately have to register as SBS Dealers. Of these entities, we believe it is reasonable to expect 22 to be non-U.S. persons.[283] The Commission also undertook an analysis of the number of security-based swap market participants likely to register as major security-based swap participants, and estimated a range of between zero and five such participants.[284]

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[275] While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). In the Cross-Border Proposing Release, we explained that we believed that data related to single-name CDS was reasonable for purposes of this analysis, as such transactions appear to constitute roughly 82% of the security-based swap market as measured on a notional basis. *See* Cross-Border Proposing Release, footnote 1301 at 31120. No comments disputed these assumptions, and we therefore continue to believe that, although the BIS data reflect the global OTC derivatives market, and not just the U.S. market, these ratios are an adequate representation of the U.S. market.

Also consistent with our approach in that release, with the exception of the analysis regarding the degree of overlap between participation in the single-name CDS market and the index CDS market (cross-market activity), our analysis below does not include data regarding index CDS as we do not currently have sufficient information to identify the relative volumes of index CDS that are swaps or security-based swaps.

[276] We note that DTCC–TIW's entity domicile determinations may not reflect our definition of "U.S. person" in all cases. Our definition of "U.S. person" follows the Cross-Border Adopting Release, at 47303.

[277] The challenges we face in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed, when fully implemented, to provide the Commission with additional measures of market activity, which should allow us to better understand and monitor activity in the security-based swap market. *See* SBSR Adopting Release, 80 FR at 14699–700.

[278] For the purposes of this analysis, we assume there were approximately 2.44 million single-name CDS transactions in 2015, of which approximately 1.08 million were transactions with a clearing agency as a counterparty. In addition to CDS, security-based swap products include equity swaps, such as total return swaps on single names and narrow-based security indexes. The Commission currently lacks comprehensive data on equity swaps, including data on transaction volumes and notional amounts. While there were greater than 2.44 million security-based swap transactions in 2015, we do not currently have sufficient information to precisely identify the number of transactions beyond those that were single-name CDS. However, while recognizing that average notional transaction amounts for equity and multi-name credit default swaps may differ from average notional transaction amounts for CDS, assuming that average notional transaction amounts are in fact equal across all SBS products, our estimate that single-name CDS constitute roughly 82% of the security-based swap market implies that there were approximately 540,000 security-based swap transactions in 2015 in addition to the approximately 2.44 million single-name CDS transactions we identify in the DTCC–TIW data, or 2.98 million total SBS transactions.

[279] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. *See, e.g., http://www.isda.org/c_and_a/pdf/ISDA-Operations-Survey-2010.pdf.*

[280] The domicile classifications in TIW data are based on the market participants' own reporting and have not been verified by Commission staff. Prior to enactment of the Dodd-Frank Act, account holders did not formally report their domicile to the TIW because there was no systematic requirement to do so. After enactment of the Dodd-Frank Act, the TIW has collected the registered office location of the account. This information is self-reported on a voluntary basis, and it is possible that some market participants may misclassify their domicile status because the databases in TIW do not assign a unique legal entity identifier to each separate entity. It is also possible that the domicile classifications may not correspond precisely to the definition of "U.S. person" under the rules defined in Exchange Act Rule 3a71–3(a)(4), 17 CFR 240.3a71–3(a)(4). Notwithstanding these limitations, the Commission believes these statistics demonstrate the extent of cross-border activity in the single-name CDS market.

[281] 80 FR 48963.

[282] *See* U.S. Activity Adopting Release, *supra* note 255, 81 FR at 8605.

In addition, in the proposed registration requirements for SBS Dealers and Major SBS Participants, we estimated, based on our experience and understanding of the swap and security-based swap markets, that of the 55 firms that might register as SBS Dealers or Major SBS Participants, approximately 35 would also register with the CFTC as swap dealers or major swap participants.[285] Available data suggest that these numbers remain largely unchanged.[286]

4. Trade Execution

The Commission has not yet finalized mandatory trade execution requirements or made available to trade determinations, and currently there are no security-based swap execution facilities registered with the Commission; security-based swaps continue to be negotiated and executed almost exclusively on a bilateral basis. Therefore, while the final trade confirmation rules contain an exception for transactions executed on a swap execution facility or national securities exchange, none of the approximately 2.98 million security-based swap transactions that executed in 2015 would have been eligible for this exception.

In the absence of SEF-executed SBS trades, we use data on index CDS transactions executed on CFTC-registered swap execution facilities to estimate the number of SBS transactions that may become eligible for the exception for SEF-executed transactions. Specifically, we rely on data tabulated by ISDA and published in the SwapsInfo Fourth Quarter 2015 Review.[287] Based on these data, we estimate that approximately 75% of index CDS transactions were executed on a SEF in 2015.

Applying this percentage to the number of single-name CDS transactions we identify in 2015 suggests that as many as 1.02 million single-name CDS transactions could be eligible for this exception assuming that mandatory trade execution rules come into force.[288] We believe this estimate is an appropriate approach because single-name and index CDS are similar products that allow market participants to buy and sell default risk: A default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name and index CDS products, prices of these products depend upon one another, creating hedging opportunities across these markets.[289] These hedging opportunities mean that participants that are active in one market are likely to be active in the other. The Commission therefore believes that, in order to attract participants seeking to transact across swap and SBS markets, SEFs may seek dual registration status with both the Commission and the CFTC, with authorization to provide markets for both index and single-name CDS. Thus, we expect that once the Commission has adopted rules for SEFs, index and single-name CDS may trade on the same execution facilities.

Nevertheless, there are reasons to believe that a greater percentage of SBS transactions will continue to be executed bilaterally. The Commission believes that index CDS products are more likely to be standardized products, used for common hedging scenarios. SBS products, on the other hand, are more likely to be bespoke products, customized for the unique hedging requirements of a particular counterparty. Therefore, we consider our estimate of SBS transactions eligible for the SEF exception to be an upper bound; the actual number of platform-executed SBS transactions could be considerably lower.

5. Clearing Activity

The Commission has not yet made mandatory clearing determinations; currently, security-based swaps are cleared on a voluntary basis. As we noted above, out of the 2.44 million single-name CDS transactions in 2015, 1.08 million, or approximately 44%, were transactions with a clearing agency as a counterparty. Under the final rules, these transactions would be eligible for an exception from trade confirmation requirements.

If the Commission were to make mandatory clearing determinations, we believe that a greater percentage of transactions could be centrally cleared, and therefore eligible for an exception from trade confirmation requirements. To estimate the potential of such transactions, we again look to data on index CDS transactions tabulated in ISDA's SwapsInfo Fourth Quarter 2015 Review, which suggests that approximately 79% of index CDS transactions were centrally cleared in 2015. Based on these data, as many as 1.93 million single-name CDS transactions could be eligible for an exception from trade confirmation requirements based on clearing status.[290]

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[283] These estimates are based on the number of accounts in DTCC–TIW data with total notional volume in excess of de minimis thresholds, increased by a factor of two, to account for any potential growth in the security-based swap market, to account for the fact that we are limited in observing transaction records for activity between non-U.S. persons that reference U.S. underliers, and to account for the fact that we do not observe security-based swap transactions other than in single name CDS. *See* Cross Border Dealing Activity Proposing Release, 80 FR at 27452; *see also* Intermediary Definitions Adopting Release, footnote 1457 at 30725.

[284] *See* SBSR Adopting Release 14693; *see also* Cross-Border Adopting Release, footnotes 150 and 153 at 47296 and 47297 (describing the methodology employed by the Commission to estimate the number of potential SBS Dealers and Major SBS Participants).

[285] *See* Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 65543 (Oct. 12, 2011), 76 FR 65784, 65808 (Oct. 24, 2011).

[286] Based on our analysis of 2015 DTCC–TIW data and the list of swap dealers provisionally-registered with the CFTC, and applying the methodology used in the Intermediary Definitions Adopting Release, we estimate that substantially all registered security-based swap dealers would also register as swap dealers with the CFTC. *See* Cross Border Dealing Activity Proposing Release, at 27458; *see also* CFTC list of provisionally registered swap dealers, available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer*.

[287] Source: ISDA, available at *http://www2.isda.org/functional-areas/research/research-notes/*. ISDA bases its analysis on public index CDS data disseminated by DTCC and Bloomberg swap data repositories.

[288] To arrive at this number, we first back out 1.08 million clearing transactions from 2.44 million total CDS transactions. This yields 1.36 million original bilateral transactions. Multiplying this by 0.75 yields 1.02 million platform-executed transactions. To account for non-CDS security-based swaps, we again rely on our estimate that single-name CDS represent 82% of the total SBS market. We also assume that ratio of cleared to non-cleared transactions is the same across all security-based swaps. This implies that, of the estimated 2.98 million SBS transactions in 2015, 1.32 million were clearing transactions, which yields 1.66 million original bilateral SBS transactions. Finally, making the further assumption that the percentage of transactions executed on a SEF will also be the same across all security-based swaps suggests that as many as 1.25 million SBS transactions could be eligible for the exception for SEF-executed transactions.

[289] "Correlation" typically refers to linear relationships between variables; "dependence" captures a broader set of relationships that may be more appropriate for certain swaps and security-based swaps. *See, e.g.*, Casella, George and Roger L. Berger, "Statistical Inference" (2002), at 171.

[290] Assuming that the ratio of cleared to non-cleared transactions is the same across all security-based swaps, we estimate that as many as 2.35 million SBS transactions could be eligible for an exception from trade confirmation requirements based on clearing status. [(2.98 million total SBS

However, for the same reasons as with platform-executed trades, the Commission believes it is plausible that a greater percentage of SBS transactions will continue to be executed on a bilateral basis. Because SBS products are more likely than index CDS products to be bespoke, we believe it is plausible that there will be a larger percentage of bespoke products that will not be accepted for clearing at registered clearing agencies. Therefore, we consider this estimate of SBS transactions eligible for a clearing exception to be an upper bound; as with platform-executed transactions, the number of cleared SBS transactions could be considerably lower than 1.93 million.

6. Current Trade Confirmation Practices

As highlighted above, various voluntary and regulatory initiatives to establish trade confirmation practices are underway in multiple jurisdictions, including the joint regulatory initiative, CFTC requirements for swap transactions, and ESMA requirements. Given the significant amount of cross-market and cross-border activity, many of the market participants active in the domestic security-based swap market are also active in the domestic swap market and foreign swap and security-based swap markets. Therefore, many of the market participants expected to register as SBS Entities may already be complying with voluntary or required trade confirmation practices, either as participants in the joint regulatory initiative, or as registered participants in another regulatory jurisdiction. We describe these practices in more detail below.

a. Joint Regulatory Initiative

As described above, in order to reduce the outstanding confirmations backlog, as well as the risks associated with the backlog, the Federal Reserve Bank of New York initiated a joint regulatory initiative with other regulators, including the Commission, in September 2005. Under this voluntary arrangement, participating dealers, including the ISDA-recognized dealers, provide electronic trade confirmations to their counterparties through DTCC's Deriv/SERV platform. In addition, trades confirmed through Deriv/SERV are automatically stored in the DTCC–TIW trade repository.[291]

The Commission understands that most of the entities expected to register as dealers are already providing electronic trade confirmations. Our understanding is based on data provided in the 2013 ISDA Operations Benchmarking Survey, the most recent survey available, covering transaction activity that occurred during the 2012 calendar year.[292] According to the survey, 98% of credit derivative transaction volume is eligible for electronic confirmation, with nearly 100% of eligible volume confirmed electronically.[293] However, the survey indicates that the majority of equity derivative transaction volume in 2012 was confirmed by means other than electronic communication. Only 30% of equity derivative transaction volume was confirmed electronically; an additional 10% was eligible for electronic confirmation but confirmed by non-electronic means, while 60% of transaction volume was not eligible for electronic confirmation.[294]

The ISDA survey further states that approximately 75% of electronically confirmed credit derivatives and 50% of electronically confirmed equity derivatives are confirmed on the same day as the transaction, with nearly 100% of electronically confirmed volume confirmed within one day. Non-electronic confirmation generally takes longer: Only 10% of transaction volume is confirmed on the transaction day, while approximately 50% of transaction volume is confirmed within two days. For non-electronic confirmations, the ISDA survey shows that it takes approximately 10 days for 100% of equity and credit derivative transactions to be confirmed.[295]

Finally, the ISDA survey provides some insight into the level of outstanding trade confirmations. Specifically, ISDA expresses outstanding confirmations as business days of activity, which is the ratio of average daily outstanding confirmations to average daily transaction volume. Using this methodology, ISDA estimates that outstanding credit derivative confirmations account for 0.3 business days of activity, with essentially no confirmations outstanding for greater than 30 days.[296] In other words, on any given trading day, the number of outstanding credit derivative confirmations is less than one day's worth of transaction volume, which is broadly consistent with ISDA's findings on confirmation timing. However, as described above, equity derivatives generally take longer to be confirmed than credit derivatives, possibly due to fewer transactions that are eligible for electronic confirmation. As a result, on any given trading day, the amount of outstanding equity derivative confirmations accounts for 4.9 days of transaction volume. In addition, confirmations outstanding for greater than 30 days account for 0.5 days of transaction volume, while confirmations outstanding for greater than 60 days account for 0.1 days of transaction volume.

b. CFTC Trade Confirmation Rules

As discussed above, of the 55 entities that may register with the Commission as SBS Entities, we expect that up to 35 may also register with the CFTC as either swap dealers or major swap participants. The CFTC adopted final trade confirmation rules in September 2012 and, as in the Commission's final rule, requires registered swap dealers and major swap participants to provide trade acknowledgments to their counterparties within one business day following the trade execution date. When the counterparty is also a registered entity, the CFTC's final rules require a complete confirmation (acknowledgment and signed verification) within one business day.

In addition, the CFTC's rules require swap dealers and major swap participants to establish and follow written policies and procedures reasonably designed to ensure that they execute a complete trade confirmation within one business day following the trade execution date for financial entity counterparties, and within two business days following the trade execution date for non-financial entity counterparties.[297]

Finally, registered swap dealers and major swap participants are not required

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transactions) × (79% centrally cleared) = 2.35 million cleared transactions).]

[291] The final rule does not restrict the use of third-party confirmation providers, consistent with the current practice of relying on DTCC to provide confirmations.

[292] Source: ISDA, available at *http://www2.isda.org/functional-areas/research/research-notes/.*

[293] ISDA defines electronically eligible as, "Transactions that are eligible for matching on an industry recognized platform, *e.g.* DTCC, MarkitWire." *See* 2013 ISDA Operations Benchmarking Survey, page 28.

[294] Source: 2013 ISDA Operations Benchmarking Survey, Table 3.1. Note that the equity derivatives category in the survey may include equity derivatives that do not meet the definition of 'security-based swap,' such as equity forwards, equity futures, and equity options. The survey lacks more-refined data that would allow us to differentiate between equity swaps and non-SBS equity derivatives.

[295] Source: 2013 ISDA Operations Benchmarking Survey, Charts 3.1 and 3.2.

[296] Source: 2013 ISDA Operations Benchmarking Survey, Chart 3.3.

[297] The CFTC's final rule defines a financial entity as one of the following: (1) A commodity pool, (2) a private fund, (3) an employee benefit plan, (4) a bank or financial institution, or (5) a security-based swap dealer or major security-based swap participant.

to provide trade acknowledgments and trade confirmations for swaps that are executed on a swap execution facility ("SEF") or submitted for clearing with a derivatives clearing organization ("DCO"), provided that the rules of the SEF or DCO require confirmation at the time of trade execution (in the case of a SEF) or at the time the swap transaction is accepted for clearing (in the case of a DCO).

c. Foreign Trade Confirmation Rules

The European Commission has established trade confirmation rules as part of the European Union's European Markets Infrastructure Regulation ("EMIR"). These rules define a trade confirmation as either electronic or signed documentation of agreement between the counterparties to a trade on all terms of the transaction. As with the CFTC confirmation rules, EMIR confirmation rules distinguish between financial and non-financial counterparties.

For transactions between financial counterparties, trades must be confirmed as soon as possible but no later than the end of the first business day following the trade execution date. For transactions that involve at least one non-financial counterparty, confirmation rules depend on whether the non-financial counterparty's OTC derivatives portfolio is above EMIR's clearing threshold. For CDS and equity swaps, the clearing threshold is EUR 1 billion in gross notional, excluding hedging contracts and other risk-reducing transactions. If a non-financial counterparty has total positions exceeding the clearing threshold, it must confirm trades as soon as possible but no later than the end of the first business day following trade execution. If a non-financial counterparty does not exceed the clearing threshold, it must confirm trades as soon as possible but no later than the end of the second business day following trade execution.

C. Benefits, Costs, and Effects on Efficiency, Competition, and Capital Formation

As discussed above, the Commission believes that the primary economic benefits of the final rules flow through reduced likelihood of a recurrence in the backlog of unconfirmed trades, as well as reductions in market, credit, settlement, and financial stability risks that accompany a backlog. We also note that economic costs accrue primarily to those potential registrants not already complying with either the CFTC's trade confirmation rules or the voluntary arrangement established through the joint regulatory initiative. Indeed, for market participants already active as security-based swap dealers, several of the economic effects described below only occur to the extent that final rules do not conform to existing practices or other regulatory regimes.

Furthermore, while trade confirmations are the responsibility of registered SBS Entities, market, credit, and settlement risks that accompany a confirmations backlog are not limited to registered entities, but rather impact all market participants and have the potential to contribute to broader market instability, as described below. Therefore, while registered SBS Entities bear the costs of the final rules, we expect the risk-reduction benefits of the rules to accrue to all SBS market participants, including both registered and unregistered participants.

In this section we first discuss the expected effects of the final rules on efficiency, competition, and capital formation, focusing particularly on the risk-mitigation benefits that stem from timely and accurate trade confirmations and a reduced likelihood of a recurrence in the backlog of unconfirmed trades. We also discuss the effects of the substituted compliance provisions on efficiency, competition, and capital formation. We then turn our discussion to additional costs and benefits, including compliance costs, which accrue to registered and unregistered market participants, as well as additional costs and benefits related to the availability of substituted compliance. Finally, we close this section with a discussion of the costs and benefits of the exemption for clearing transactions and for exchange and SEF transactions.

1. Effects on Efficiency, Competition, and Capital Formation

Final trade acknowledgment and verification rules have the potential to affect efficiency, competition, and capital formation in the security-based swap market, primarily through a reduction in market, credit, and settlement risks that accompany unconfirmed transactions. In addition, the substituted compliance framework may provide additional effects that are distinct from the broader market impacts that are described below. As with the benefits and costs, we believe that several of the effects described below only occur to the extent that current market practices do not already conform to our final rules.

a. Broad Market Effects

As described above, delays in the acknowledgment and verification of trades may cause errors and disputes over the terms of a transaction to go undetected, leading to errors in measurement and management of market and credit risks associated with particular transactions. More generally, timely acknowledgment and verification of security-based swap transactions will provide counterparties with accurate information that will enable them to evaluate their own risk exposure in a timely manner. Efficient and cost-effective risk management may conserve resources and free up capital that can be deployed in other asset classes, promoting risk-sharing and efficient capital allocation. In addition, cost-effective risk management may reduce the overall costs of financial intermediation, allowing market participants to increase lending and other capital formation activities.

Similarly, improvements in the settlement process that come from timely and accurate trade confirmations may contribute to broader market stability, particularly during periods of distress. As described above, a backlog of unconfirmed trades could hinder timely and efficient settlement of SBS transactions, particularly in the case of a credit event on a reference entity with a large notional outstanding and many counterparties. During periods of financial distress, failure to settle transactions in a timely manner could contribute to liquidity and cash shortfalls that threaten the stability of the financial system. Thus, to the extent that the final rules prevent a recurrence of the confirmation backlog, we expect reduced risk of settlement frictions and associated liquidity shortfalls.

Finally, to the extent that final trade confirmation requirements differ from current market practices, the final rules have the potential to affect competition across multiple dimensions. If the costs of acknowledging and verifying SBS transactions are largely fixed (*i.e.*, the costs come from establishing infrastructure and systems necessary to provide confirmations) rather than varying with the number of transactions confirmed, smaller dealers intermediating a smaller number of trades may have a larger burden placed on them; larger dealers, on the other hand, may be able to spread the costs over a greater number of trades, with a lower average cost of providing confirmations. Similarly, the costs of establishing an infrastructure to provide electronic trade acknowledgments may create a barrier to entry for market participants wishing to establish a security-based swap dealer business.

At the same time, SBS Entities may find it advantageous to compete over transaction acknowledgment and verification speed. That is, timely and accurate trade confirmation may allow market participants to better manage their market and cash flow risks, improving the efficiency and cost-effectiveness of hedging; as a result, market participants may be encouraged to enter into transactions with SBS Entities whose automated operations reduce the time it takes to acknowledge the terms of the trade.

b. Substituted Compliance

As discussed above, if the Commission has made a positive substituted compliance determination with respect to a particular foreign regulatory regime, registered foreign SBS Entities subject to that regulatory regime may be able to satisfy their Title VII trade acknowledgment and verification requirements by alternatively complying with trade confirmation requirements of the foreign jurisdiction. Substituted compliance would be potentially available for registered SBS Entities who are not U.S. persons with respect to all of their security-based swap business.

The Commission is adopting rules to permit consideration of substituted compliance in order to minimize the likelihood that security-based swap dealers are subjected to potentially duplicative or conflicting regulation. The Commission believes that duplicative regulations that achieve comparable regulatory outcomes increase the compliance burdens on market participants without corresponding increases in benefits. By decreasing the compliance burden for foreign SBS dealers active in the U.S. market, the availability of substituted compliance could encourage foreign firms' participation in the U.S. market, increasing the ability of U.S. firms to access global liquidity, and reducing the likelihood that liquidity would fragment along jurisdictional lines. Thus, the availability of substituted compliance for non-U.S. SBS Entities may help promote market efficiency and enhance competition in U.S. markets. In particular, participation by non-U.S. firms and access to liquidity for U.S. firms should promote efficient hedging and sharing of risks among market participants and might result in increased competition between both U.S. and foreign intermediaries without compromising the regulatory benefits intended by the applicable trade confirmation rules.

2. Costs and Benefits to Registered SBS Entities

Under the final rule, a registered SBS Entity is required to provide an electronic trade acknowledgment to its counterparty, including all terms of the transaction, no later than the end of the first business day following the day of trade execution.[298] In addition, an SBS Entity must promptly verify trade acknowledgments it receives from another SBS Entity or dispute its terms, and have policies and procedures in place reasonably designed to ensure prompt acknowledgment and verification of transactions from counterparties. Finally, an SBS Entity may rely on a third-party of its choosing, including—but not limited to—a clearing agency or swap execution facility, to provide trade acknowledgments.

As noted above, the Commission estimates that up to 50 entities may register with the Commission as SBS dealers, and up to 5 additional entities may register as major SBS participants. We note that many of these entities may already have platforms and systems necessary to provide acknowledgments and verifications, either because they are operating under the framework established by the joint regulatory initiative, or because they are already complying with the CFTC's trade confirmation rules. However, we expect that certain entities that cannot already satisfy the requirements of the final rules, including new entrants, will incur costs to establish necessary systems to provide electronic trade acknowledgments.

To fulfill the proposed rule's requirements, the Commission believes that SBS Entities would have to develop an OMS with portals to relevant clearing agencies and real-time or near real-time linkages between an SBS Entities' front and back-office operations. An SBS Entity would have to develop an OMS regardless of whether an SBS transaction is, or can be, cleared by a clearing agency.

The Commission estimates that an SBS Entity's development of an OMS that achieves compliance with Rule 15Fi-2 would impose a one-time aggregate cost of $5,315,750,[299] or approximately $96,650 per SBS Entity. This estimate includes the development of an OMS that leverages off of an SBS Entity's existing front-office and back-office operational platforms. The Commission further estimates that the requirements of Rule 15Fi–2 would impose an ongoing annual aggregate cost of $4,022,920, or approximately $73,144 per SBS Entity.[300] This estimate would include day-to-day technical supports of the OMS, as well as an estimate of the amortized annual burden associated with system or platform upgrades and periodic "re-platforming" (*i.e.*, implementing significant updates based on new technology, products, or both). In addition, the Commission estimates that the development and implementation of written policies and procedures as required under paragraph (d)(1) of Final Rule 15Fi–2 would impose initial costs of $1,754,500, or approximately $31,900 per SBS Entity.[301] Once established, the Commission estimates that it would cost respondents approximately $877,250 per year, or $15,950 per respondent,[302] to update and maintain these policies and procedures.

In sum, the Commission estimates that the initial cost of complying with Rule 15Fi–2 will be $7,070,250 for all respondents, or $128,550 per SBS Entity.[303] The Commission estimates that total ongoing costs to respondents would be $4,900,170 for all respondents, or $89,094 per SBS

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[298] In the case of a transaction between a registered SBS dealer and a registered major SBS participant, the SBS dealer must provide the trade acknowledgment. For transactions between two SBS dealers or two major SBS participants, the counterparties must come to an agreement on which counterparty will provide the trade acknowledgment and which counterparty will provide the trade verification.

[299] This estimate is based on the following: [((Sr. Programmer (160 hours) at $285 per hour) + (Sr. Systems Analyst (160 hours) at $251 per hour) + (Compliance Manager (10 hours) at $294 per hour) + (Director of Compliance (5 hours) at $426 per hour) + (Compliance Attorney (20 hours) at $291 per hour) × (55 SBS Entities)] = $5,315,750 or $96,650 per SBS Entity. The Commission understands that many SBS Entities may already computerized systems in place for electronically processing SBS transactions, whether internally or through a clearing agency.

[300] This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Sr. Programmer (32 hours) at $285 per hour) + (Sr. Systems Analyst (32 hours) at $251 per hour) + (Compliance Manager (60 hours) at $294 per hour) + (Compliance Clerk (240 hours) at $59 per hour)+ (Director of Compliance (24 hours) at $426 per hour + (Compliance Attorney (48 hours) at $291 per hour) x (55 SBS Entities)] = $4,022,920, or $73,144 per SBS Entity.

[301] This estimate comes from Commission staff experience regarding the development of policies and procedures and is calculated as follows: [(Compliance Attorney (40 hours) at $294 per hour) + (Director of Compliance (20 hours) at $426 per hour) + (Deputy General Counsel (20 hours) at $581 per hour) × (55 SBS Entities)] = $1,754,500 total, or $31,900 per SBS Entity.

[302] This estimate comes from Commission staff experience regarding the updating and maintenance of policies and procedures and is calculated as follows: [(Compliance Attorney (20 hours) at $294 per hour) + (Director of Compliance (10 hours) at $426 per hour) + (Deputy General Counsel (10 hours) at $581 per hour) × (55 SBS Entities)] = $877,250 total, or $15,950 per SBS Entity.

[303] ($5,315,750 initial cost for developing OMS) + ($1,754,500 for developing policies and procedures) = $7,070,250 for all respondents. ($7,070,250/55 Respondents) = $128,550 per SBS Entity.

Entity.[304] We note, however, that these estimates are grounded in the assumption that each registered entity must establish the necessary systems to comply with the final rules. If potential registrants already have systems in place that would allow them to comply with the rules, either because they participate in the joint regulatory initiative or are registered with the CFTC and comply with their trade confirmation rules, these assessments may over-estimate the aggregate cost to registered SBS Entities of complying with Rule 15Fi–2.

In addition to compliance costs, we expect several additional economic costs and benefits to accrue to registered SBS Entities. Many of these costs and benefits flow from policy choices designed to ease the overall compliance burden. For example, the final rule does not restrict the ability of SBS Entities to rely on third parties, including—but not limited to—clearing agencies and swap execution facilities, to provide trade confirmations. This rule should reduce the overall compliance burden by allowing SBS Entities to leverage existing infrastructure of certain third-party entities that already provide this service.[305]

Similarly, the Commission is not prescribing means or standards for electronic communications; only providing that paper acknowledgments are not in conformance with the rule. We expect that, due to network externalities, the market will conform to a common standard for transmitting trade acknowledgments, such as FpML or FIXML. However, smaller counterparties with low levels of SBS activity may not have the infrastructure in place to receive electronic communications in FpML or FIXML format; the ability for SBS Entities to transmit electronic communications to these counterparties in other formats may increase flexibility and thereby generate cost savings compared with using the FpML or FIXML formats.

Finally, we noted at the outset that reductions in the trade confirmations backlog that developed during the growth of the credit derivatives market would benefit all market participants, even as no one participant had the ability to unilaterally solve the backlog problem. If final rules prevent a recurrence of the backlog, as active participants in the SBS market intermediating the vast majority of SBS transactions, registered SBS Entities will benefit from reductions in market, credit, and settlement risks that accompany the reduced risk of a backlog recurrence.

3. Costs and Benefits to Non-Registered Market Participants

Final trade confirmation rules impose no regulatory requirements on non-registered market participants. However, we expect that market participants transacting with registered SBS Entities may benefit from timely acknowledgment of the terms of a transaction. In particular, to the extent that current market practices differ from the requirements under the final rules, non-registered market participants may find that timely acknowledgment of the terms will allow them to detect errors in the trade acknowledgment more quickly, and may also speed up resolution of disputes. Improved accuracy may allow these participants to better manage their market and cash flow risks, reducing the overall costs of hedging.

In addition, we expect that non-registered participants will also benefit from the reduced risk of a backlog recurrence. As described above, market, credit, and settlement risks that accompany a confirmations backlog are not limited to registered entities, but rather affect all market participants and could contribute to broader market instability. Therefore, we expect non-registered participants, who represent the great majority of transacting entities in the SBS market, to benefit from the reduced risk of a backlog recurrence.

However, we acknowledge that while these rules impose no regulatory requirements or direct costs on non-registered market participants, final trade confirmation rules may nevertheless impose indirect costs on these participants through higher transaction costs. While the Commission believes that market participants may already be broadly conforming to these rules for their CDS transactions, SBS Entities may incur costs in developing electronic confirmation systems for their non-CDS security-based swap activity. To the extent that market conditions allow it, SBS Entities may be able to pass some of these costs onto their counterparties through increased transaction costs.

In addition, final trade confirmation rules require SBS Entities to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment from their counterparties, including non-registered counterparties. While this requirement imposes no direct obligations on non-registered market participants, the Commission recognizes that the requirement to establish, maintain, and enforce policies and procedures on prompt trade verification may cause SBS Entities to impose trade verification conditions on their counterparties that differ from current market practices. As a result, non-registered market participants may incur costs if new trade verification conditions necessitate upgrades to or investments in electronic trading and confirmation systems.

Because SBS Entities' future trade verification policies and procedures are unknown, the Commission lacks precise information on how market conventions on trade verification may change after adoption of final trade confirmation rules, as well as information that would allow us to quantify any costs associated with such changes. However, the Commission believes that any such costs would be incurred primarily by entities transacting in equity swaps. As highlighted in the Baseline, according to the 2013 ISDA Operations Benchmarking Survey, only 30% of equity derivative volume in 2012 was confirmed electronically, which suggests that some market participants transacting in equity swaps may need to invest in technology necessary to comply with the final rule's electronic confirmation requirements.[306] On the other hand, the market for credit derivatives has already achieved nearly 100% electronic confirmation within one business day, suggesting that any such costs may be minimal for market participants transacting in credit derivatives that are security-based swaps.[307]

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[304] ($4,022,920 ongoing cost for maintaining OMS) + ($877,250 for maintaining policies and procedures) = $4,900,170 for all respondents. ($4,900,170/55 Respondents) = $89,094 per SBS Entity.

[305] Under current voluntary reporting regime, market participants report transaction terms to the TIW. As part of the reporting regime, trades entered into the TIW are confirmed electronically through MarkitSERV, a joint venture between DTCC and Markit.

[306] As discussed above in the Baseline, the equity derivatives category in the ISDA survey may include equity derivatives that do not meet the definition of 'security-based swap,' such as equity forwards, equity futures, and equity options. The survey lacks more-refined data that would allow us to differentiate between equity swaps and non-SBS equity derivatives.

[307] For the purposes of the survey, ISDA defines electronic confirmation as, "The process by which derivative post-trade processes are automated. Confirmations are submitted to an electronic platform for matching, *e.g.*, MarkitWire, DTCC, Swift." *See* 2013 ISDA Operations Benchmarking Survey, page 28. This definition does not correspond precisely to the Commission's final rule on electronic confirmations, which allows for confirmation through any electronic means, and is not limited to matching services or other electronic platforms. Therefore, the extent to which market participants may need to invest in technology depends on SBS Entities' trade verification policies and procedures, and whether the trade verification

4. Costs and Benefits of the Substituted Compliance Provisions

The Commission believes that the availability of substituted compliance for trade confirmation requirements would not substantially change the benefits intended by the final trade confirmation rules. We note that the Commission may grant positive substituted compliance determinations when it concludes that regulatory requirements in a particular foreign jurisdiction achieve comparable regulatory outcomes. Thus, we do not expect that the availability of substituted compliance will diminish the risk-mitigation benefits that stem from timely and accurate trade confirmations and a reduced likelihood of a recurrence in the backlog of unconfirmed trades.

To the extent that substituted compliance eliminates duplicative compliance costs, registered foreign security-based swap Entities entering into SBS transactions that are eligible for substituted compliance may incur lower overall costs associated with providing trade confirmations to their counterparties than they would otherwise incur without the option of substituted compliance available, either because a registered foreign security-based swap Entity may have implemented foreign regulatory requirements that are determined comparable by the Commission, or because counterparties to a security-based swap transaction eligible for substituted compliance do not need to duplicate compliance with two sets of comparable requirements.

Under final rules adopted by the Commission in 2014, a substituted compliance request may be made by either a foreign regulatory jurisdiction on behalf of its market participants, or by a registered market participant itself.[308] The decision to request substituted compliance is purely voluntary. To the extent such requests are made by market participants, such participants would request substituted compliance only if, in their own assessment, compliance with applicable requirements under a foreign regulatory system was less costly than compliance with both the foreign regulatory regime and the relevant Title VII requirement, including Title VII trade confirmation requirements. Even after a substituted compliance determination is made, market participants would only choose substituted compliance for trade confirmations if the private benefits they expect to receive from participating in the U.S. market exceed the private costs they expect to bear—that is, if participation in the U.S. market is beneficial and substituted compliance for trade confirmations is the least-cost alternative. Where substituted compliance increases the number of dealers active in the U.S. security-based swap market, or prevents existing participants from leaving the U.S. market and preserves counterparty relationships, we expect the final rules to promote efficient hedging and sharing of risks, as described above.

5. Costs and Benefits of the Clearing and Security-Based Swap Execution Facility and National Securities Exchange Exceptions

Under the final rule, a registered SBS Entity is not required to provide a trade acknowledgment or verification when the direct counterparty to the trade is a registered clearing agency.[309] As discussed above, the Commission believes that, as a matter of good business practice, registered clearing agencies may establish rules providing for appropriate documentation of SBS clearing transactions with all counterparties, including SBS Entities. Because central clearing of security-based swaps shifts the counterparty risk from individual counterparties to CCPs whose members collectively share the default risk of all members, it is in the economic interest of the clearing agency and its member firms to have confirmation policies in place to ensure that risks are properly documented. Indeed, as described above, ICE Clear Credit and ICE Clear Europe have rules in place designed to ensure that any SBS transactions submitted for clearing have been matched and confirmed prior to acceptance and processing by the registered clearing agency for clearing.

As a result, the Commission believes that requiring SBS Entities to also provide a trade acknowledgment to the clearing agency would be duplicative, without sufficient benefits to justify such a requirement. Similarly, the Commission is adopting a conditional exception from an SBS Entity's trade confirmation obligations for transactions that are submitted for clearing within one business day after execution of the transaction. For these transactions, an SBS Entity would not have to complete a trade confirmation with its counterparty as long as the transaction is submitted to a clearing agency within the prescribed time limit and the rules of the clearing agency provide for or require the confirmation of all terms of the security-based swap transaction prior to or at the same time that the security-based swap transaction is accepted for clearing. As with the direct clearing transactions, the Commission believes that as long as the transaction is submitted to a clearing agency within a specified time and the clearing agency has the appropriate rules in place, the clearing exception will not reduce the benefits of the final trade confirmation rules.

For these reasons, the Commission believes that requiring SBS Entities to provide trade confirmation for clearing transactions, as well as transactions submitted for clearing, would be duplicative, increasing compliance costs without corresponding increases in benefits. Allowing an exception should therefore conserve resources and reduce costs for market participants without decreasing the risk mitigation benefits that accompany timely and accurate confirmation of SBS transactions.

The Commission is also adopting a final rule that excepts SBS Entities from trade confirmation requirements for transactions executed on a registered security-based swap execution facility or national securities exchange, provided that the execution facility or national securities exchange has rules for promptly acknowledging and verifying the terms of transactions with market participants. As we noted above, trade confirmations serve to mitigate market, credit, and settlement risks that can occur when, due to, among other reasons, errors and miscommunications, counterparties do not agree on the terms of a trade. Such risks are inherent in bilateral negotiations, but the Commission believes they are less likely on transparent trading venues, where contract terms are standardized and readily available.

Furthermore, this exception is available only if the trade acknowledgment and verification provided by the execution facility or exchange is delivered in accordance with the requirements of the final rules—that is, by the end of the first business day following the day of execution—and provides all the terms of

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conditions they impose on counterparties are narrow (*e.g.,* verification must be provided on an electronic platform) or broad (*e.g.,* terms may be verified over email). In an analogous scenario, based on discussions with the CFTC, Commission staff is not aware that dealers in CFTC-regulated swap products are imposing costly trade verification conditions on their unregistered counterparties.

[308] Cross-Border Adopting Release, 79 FR 47277.

[309] Our final rule differs from the CFTC's in this respect. The CFTC exempts transactions with a clearing agency from its confirmation requirements only if the clearing agency has rules requiring confirmation at the time the trade is accepted for clearing. While we expect that clearing agencies registered with the Commission will have such a requirement, we do not condition our exemption for clearing transactions on the existence of such requirements.

the transaction, consistent with the obligations for SBS Entities. Thus, from the standpoint of counterparties to SBS Entities, there are no material differences between trade acknowledgments provided by SBS Entities and trade acknowledgments provided by execution facilities; the only difference is the entity that provides the acknowledgment and receives the verification (or dispute of terms).

Nevertheless, while SBS Entities are required to provide trade acknowledgments to their counterparties within one business day of execution, execution facilities and exchanges are only required to deliver the trade acknowledgment promptly. Therefore, under the final rule, there is the potential for trade confirmations provided by execution facilities and exchanges to be delayed relative to confirmations provided by SBS Entities. However, as discussed above, the Commission believes that risks associated with unconfirmed transactions are less likely for trades that take place on transparent trading venues, where contract terms are standardized and readily available to market participants. As a result, the cost of delayed transactions should be lower for SBS transactions executed on transparent venues relative to SBS transactions executed bilaterally.

6. Exemption From Rule 10b–10

Included in the final rule is an exemption from Rule 10b–10 that applies when an SBS Entity is acting as principal for its own account in a security-based swap transaction. Because security-based swaps meet the statutory definition of a security, an SBS Entity that is also a broker or dealer could be required to comply with both Rule 10b–10 and Rule 15Fi–2 with respect to the same transaction. In the case of principal transactions, such a requirement would be duplicative, without corresponding benefits, since an SBS Entity that is also a broker-dealer would effectively be required to provide two sets of similar disclosures to the same counterparty. As a result, the included exemption should mitigate unnecessary burdens that would fall on SBS Entities that are also broker-dealers due the statutory extension of the definition of "security" to include security-based swaps.

D. Alternatives Considered

1. Trade Acknowledgment Rules

The Commission has evaluated reasonable alternatives to the final trade acknowledgment requirements. In particular, we have considered limiting third parties permitted to provide trade acknowledgments to registered clearing agencies only, requiring trade acknowledgments for electronic transactions to be provided within 30 minutes of execution, and requiring a trade acknowledgment to include an enumerated list of terms. In general, we do not believe that these alternatives would materially alter the primary benefits of the rules—that is, we expect that these alternatives would continue to reduce the likelihood of a recurrence in the confirmations backlog, along with the market, credit, settlement, and financial stability risks that would accompany a backlog. However, we believe these alternatives could increase compliance costs without corresponding increases in benefits. For example, we estimate that greater than half of potential SBS Entities would be dual-registered with the CFTC. To the extent that these alternatives differ from the CFTC's trade confirmation rules, registered SBS Entities—who potentially use the same personnel to effect both swaps and security-based swaps—would have to comply with two sets of rules designed to achieve the same objective.

a. Approved Third Parties

As in the proposal, the Commission has considered limiting the set of third parties permitted to provide trade acknowledgments to registered clearing agencies only. Relative to the final rule, we expect that this alternative could increase compliance costs by reducing operational flexibility. In particular, for SBS transactions executed on a security-based swap execution facility or national securities exchange, we expect that the SBSEF, as part of an electronic transaction, will have the requisite information to satisfy the trade acknowledgment requirement on behalf of an SBS Entity. Furthermore, because the SBSEF will have electronic systems in place to execute transactions, it likely will be able to provide electronic trade acknowledgments at costs that are comparable to that of a clearing agency. For uncleared trades, limiting the set of approved parties to registered clearing agencies could therefore increase costs by requiring SBS Entities who choose to use third parties for their trade confirmations to include an additional intermediary for platform-executed transactions.

b. Time of Acknowledgment

The Commission proposed and considered adopting a final rule requiring trade acknowledgments within 15 minutes for trades executed and processed electronically, and within 30 minutes for trades not executed electronically but processed electronically. While timelier acknowledgment has the potential to decrease risk management costs—by providing counterparties with confirmation of transaction terms more quickly, reducing the likelihood of errors in hedges—these benefits are not without cost. In particular, as noted by commenters, 30 minutes may not provide sufficient time for certain asset classes, or for transactions intermediated by investment advisers acting as agent for a client. In such transactions, the ultimate counterparty may not be known within 30 minutes; this could lead inaccurate acknowledgments disseminated only to satisfy regulatory requirements, with revised acknowledgments, duplications, or cancellations provided at a later time with the final terms of the trade.

c. Terms of the Transaction

Finally, the Commission proposed and considered adopting a final rule with an enumerated list of terms to be disseminated as part of the trade acknowledgment. The Commission believes this approach would be less effective in the sense that it fails to acknowledge that the terms of a transaction may differ across different classes of security-based swap and bespoke security-based swaps. In this sense, adopting this alternative could fail to reduce settlement risks if a term of a particular SBS is not on the enumerated list.

In addition, this alternative may increase compliance costs due to differences with the CFTC's final approach. Unlike the Time of Acknowledgment requirement, where dual registrants complying with a potential 30-minute requirement for SBS would automatically be complying with the CFTC's one-business-day requirement, an enumerated list of terms is not necessarily a subset of all terms, or vice versa. Therefore, market participants registered with both the SEC as SBS Entities and the CFTC as Swap Entities would be required to maintain separate trade acknowledgment systems for swaps and SBS, which likely would increase overall compliance costs relative to the final rule that is largely harmonized with the CFTC.

2. Clearing Transactions

The Commission considered requiring SBS Entities to provide trade acknowledgments to registered clearing agencies when the clearing agency is a direct counterparty and also considered requiring SBS Entities to provide trade acknowledgments to the counterparties for transactions subsequently submitted for clearing. While such requirements would benefit counterparties to SBS Entities, by ensuring that they receive trade acknowledgments within the specified time, the Commission believes this requirement would ultimately be duplicative. As described above, the rules, procedures, and processes of registered clearing agencies that provide central counterparty services for security-based swaps are generally designed to ensure that the terms of SBS transactions submitted for clearing have been matched and confirmed prior to or at the same time the transaction is accepted by the registered clearing agency for clearing. The Commission believes that, in circumstances where the clearing agency's rules, procedures or processes provide for the same outcome as those the final trade confirmations rule is designed to achieve, it is unnecessary to require SBS Entities to duplicate the trade confirmation. Furthermore, in circumstances where a clearing agency's rules, procedures or processes do not require trade confirmations, the exception for cleared transactions would not be available.

3. Certain Transactions on a Security-Based Swap Execution Facility or a National Securities Exchange

The Commission considered requiring SBS Entities to provide trade acknowledgments for all transactions executed on a trading platform, including transactions intended to be cleared. We note that, as a practical matter, SBS Entities would not be able to satisfy trade confirmation obligations with anonymous counterparties; mandating a trade confirmation requirement for transactions executed on a swap execution facility or national securities exchange would therefore preclude anonymous transactions. To the extent that there exists certain market participants who prefer to transact anonymously, such a requirement could potentially reduce liquidity and the overall supply of security-based swaps available for trade, as well as the set of counterparties available for hedging and sharing of risks.

As an alternative to requiring SBS Entities to provide trade acknowledgments for platform-executed trades, the Commission could limit the exception for platform-executed trades to cleared, anonymous transactions, retaining the trade confirmation requirement for all other transactions executed on an execution facility. Such requirements could be potentially duplicative, without corresponding benefits. Under this alternative, the execution facility would be required to provide trade confirmations for anonymous transactions, and would therefore have the systems and infrastructure in place to provide confirmations for all transactions executed on the facility. If the execution facility chose to provide confirmations for all transactions as a matter of routine practice, there would be little benefit to requiring the SBS Entity to duplicate the confirmation, as long as the confirmation provided by the execution facility satisfied the time, form, and content requirements prescribed by Rule 15Fi–2.

E. Comment and Response to Comment

One commenter suggested that the Commission's estimated cost of $66,650 per entity to develop an internal order and trade management system very seriously underestimates the cost.[310] As discussed above in Section VI.B.4, based on Commission staff discussions with this commenter, the Commission believes its cost estimates remain appropriate. In particular, because the rule the Commission is adopting is much more closely aligned with the CFTC Rule than the proposed rule was, we believe our original estimates do not underestimate the actual cost of the rule as adopted.

VIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA") [311] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Pursuant to Section 605(b) of the RFA,[312] the Commission certified in the Proposing Release and Cross-Border Proposing Release, respectively, that proposed Rule 15Fi–1 and proposed Rule 3a71–6 would not, if adopted, have a significant economic impact on a substantial number of "small entities." [313] The Commission received no comments on these certifications.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (i) When used with reference to an "issuer" or a "person," other than an investment company, an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [314] or (ii) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[315] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[316] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities in credit intermediation and related activities,[317] entities with $550 million or less in assets or, (ii) for non-depository credit intermediation and certain other activities,[318] $38.5 million or less in annual receipts; (iii) for entities in financial investments and related activities,[319] entities with $38.5 million or less in annual receipts; (iv) for insurance carriers and entities in related activities,[320] entities with $38.5 million or less in annual receipts, or 1,500 employees for direct property and casualty insurance carriers; and (v) for funds, trusts, and other financial vehicles,[321] entities with $32.5 million or less in annual receipts.[322]

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[310] ISDA I at 8.

[311] 5 U.S.C. 601 *et seq.*

[312] 5 U.S.C. 605(b).

[313] Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Statement of Management on Internal Control, Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

[314] *See* 17 CFR 240.0–10(a).

[315] *See* 17 CFR 240.17a–5(d).

[316] *See* 17 CFR 240.0–10(c).

[317] Including commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing. 13 CFR 121.201 at Subsector 522.

[318] Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearing house activities, and other activities related to credit intermediation. 13 CFR 121.201 at Subsector 522.

[319] Including firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. 13 CFR 121.201 at Subsector 523.

[320] Including direct life insurance carriers, direct health and medical insurance carriers, direct property and casualty insurance carriers, direct title insurance carriers, other direct insurance (except life, health and medical) carriers, reinsurance carriers, insurance agencies and brokerages, claims adjusting, third party administration of insurance and pension funds, and all other insurance related activities. 13 CFR 121.201 at Subsector 524.

With respect to SBS Entities, based on feedback from market participants and our information about the security-based swap markets, the Commission continues to believe that (1) the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be "small entities" for purposes of the RFA; and (2) the types of entities that may have security-based swap positions above the level required to be "major security-based swap participants" would not be "small entities" for purposes of the RFA.[323]

Therefore, the Commission continues to believe that Rules 15Fi–1 and 15Fi–2 and the amendment to Rule 3a71–6 will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

For the foregoing reasons, the Commission certifies that Rules 15Fi–1 and 15Fi–2 and the amendment to Rule 3a71–6, as adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

IX. Statutory Basis and Text of Amendments

The Commission is amending Rule 3a71–6 pursuant to Sections 3(b), 15F, and 23(a) of the Exchange Act, as amended. Additionally, the Commission is adopting Rule 15Fi–1 and Rule 15Fi–2 pursuant to Section 15F of the Exchange Act, as amended.

List of Subjects in 17 CFR Part 240

Major security-based swap participants, Reporting and recordkeeping requirements, Securities, Security-based swaps, Security-based swap dealers.

In accordance with the foregoing, the Securities and Exchange Commission is amending Title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 240.3a71–6(d) is amended by adding paragraph (d)(3) to read as follows:

§ 240.3a71–6 Substituted compliance for security-based swap dealers and major security-based swap participants.

* * * * *

(d) * * *

(3) *Trade acknowledgment and verification.* The trade acknowledgment and verification requirements of section 15F(i) of the Act (15 U.S.C. 78o–10(i)) and § 240.15Fi–2; provided, however, that prior to making such a substituted compliance determination the Commission intends to consider whether the information that is required to be provided pursuant to the requirements of the foreign financial regulatory system, and the manner and timeframe by which that information must be provided, are comparable to those required pursuant to the applicable provisions arising under the Act and its rules and regulations.

* * * * *

■ 3. Revise the undesignated center heading following § 240.15Cc1–1 to read as follows:

REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS

■ 4. Add § 240.15Fi–1 and § 240.15Fi–2 to read as follows:

§ 240.15Fi–1 Definitions.

For the purposes of § 240.15Fi–1 and § 240.15Fi–2:

(a) The term *business day* means any day other than a Saturday, Sunday, or legal holiday.

(b) The term *clearing agency* means a clearing agency as defined in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)) that is registered pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) and provides central counterparty services for security-based swap transactions.

(c) The term *clearing transaction* means a security-based swap that has a clearing agency as a direct counterparty.

(d) The term *day of execution* means the calendar day of the counterparty to the security-based swap transaction that ends the latest, provided that if a security-based swap transaction is

(1) Entered into after 4:00 p.m. in the place of a counterparty; or

(2) Entered into on a day that is not a business day in the place of a counterparty, then such security-based swap transaction shall be deemed to have been entered into by that counterparty on the immediately succeeding business day of that counterparty, and the day of execution shall be determined with reference to such business day.

(e) The term *execution* means the point at which the counterparties become irrevocably bound to a transaction under applicable law.

(f) The term *security-based swap execution facility* means a security-based swap execution facility as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) that is registered pursuant to section 3D of the Securities Exchange Act of 1934 (15 U.S.C. 78c–4).

(g) The term *national securities exchange* means an exchange as defined in section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(1)) that is registered pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(h) The term *trade acknowledgment* means a written or electronic record of a security-based swap transaction sent by one counterparty of the security-based swap transaction to the other.

(i) The term *verification* means the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.

§ 240.15Fi–2 Acknowledgment and verification of security-based swap transactions.

(a) *Trade acknowledgment requirement.* In any transaction in which a security-based swap dealer or major security-based swap participant purchases from or sells to any counterparty a security-based swap, a trade acknowledgment must be provided by:

(1) The security-based swap dealer, if the transaction is between a security-based swap dealer and a major security-based swap participant;

(2) The security-based swap dealer or major security-based swap participant, if only one counterparty in the transaction is a security-based swap dealer or major security-based swap participant; or

(3) The counterparty that the counterparties have agreed will provide

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[321] Including pension funds, health and welfare funds, other insurance funds, open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts and other financial vehicles. 13 CFR 121.201 at Subsector 525.

[322] *See* 13 CFR 121.201.

[323] *See* SBS Books and Records Proposing Release, *supra* note 128, 79 FR at 25296–97 and n.1441; Intermediary Definitions Adopting Release, *supra* note 3, 77 FR at 30743.

the trade acknowledgment in any transaction other than one described by paragraph (a)(1) or (a)(2) of this section.

(b) *Prescribed time.* Any trade acknowledgment required by paragraph (a) of this section must be provided promptly, but in any event by the end of the first business day following the day of execution.

(c) *Form and content of trade acknowledgment.* Any trade acknowledgment required by paragraph (a) of this section must be provided through electronic means that provide reasonable assurance of delivery and a record of transmittal, and must disclose all the terms of the security-based swap transaction.

(d) *Trade verification.* (1) A security-based swap dealer or major security-based swap participant must establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment provided pursuant to paragraph (a) of this section.

(2) A security-based swap dealer or major security-based swap participant must promptly verify the accuracy of, or dispute with its counterparty, the terms of a trade acknowledgment it receives pursuant to paragraph (a) of this section.

(e) *Exception for clearing transactions.* A security-based swap dealer or major security-based swap participant is excepted from the requirements of this section with respect to any clearing transaction.

(f) Exception for transactions executed on a security-based swap execution facility or national securities exchange or accepted for clearing by a clearing agency.

(1) A security-based swap dealer or major security-based swap participant is excepted from the requirements of this subsection with respect to any security-based swap transaction executed on a security-based swap execution facility or national securities exchange, provided that the rules, procedures or processes of the security-based swap execution facility or national securities exchange provide for the acknowledgment and verification of all terms of the security-based swap transaction no later than the time required by paragraphs (b) and (d)(2) of this section.

(2) A security-based swap dealer or major security-based swap participant is excepted from the requirements of this subsection with respect to any security-based swap transaction that is submitted for clearing to a clearing agency, provided that:

(i) The security-based swap transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment under paragraph (b) of this section; and

(ii) The rules, procedures or processes of the clearing agency provide for the acknowledgment and verification of all terms of the security-based swap transaction prior to or at the same time that the security-based swap transaction is accepted for clearing.

(3) If a security-based swap dealer or major security-based swap participant receives notice that a security-based swap transaction has not been acknowledged and verified pursuant to the rules, procedures or processes of a security-based swap execution facility or a national securities exchange, or accepted for clearing by a clearing agency, the security-based swap dealer or major security-based swap participant shall comply with the requirements of this section with respect to such security-based swap transaction as if such security-based swap transaction were executed at the time the security-based swap dealer or major security-based swap participant receives such notice.

(g) *Exemption from § 240.10b–10.* A security-based swap dealer or major security-based swap participant that is also a broker or dealer, is purchasing from or selling to any counterparty, and that complies with paragraph (a) or (d)(2) of this section with respect to the security-based swap transaction, is exempt from the requirements of § 240.10b–10 with respect to the security-based swap transaction.

By the Commission.

Dated: June 8, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13915 Filed 6–16–16; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 12
Seizure and Forfeiture Procedures; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 12

[Docket No. FWS–HQ–LE–2016–0067; FF09L00200–FX–LE12200900000]

RIN 1018–AC89

Seizure and Forfeiture Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to revise its seizure and forfeiture regulations. These regulations establish procedures relating to property seized or subject to administrative forfeiture under various laws enforced by the Service. This revision will set forth the procedures the Service uses for the seizure, bonded release, appraisement, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service and will reflect the procedures required by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and those of U.S. Customs and Border Protection. This proposed rule will make these regulations easier to understand through the use of simpler language. This proposed revision will also more clearly explain the procedures used in administrative forfeiture proceedings, make the process more efficient, and make the Service's seizure and forfeiture procedures more uniform with those of other agencies subject to CAFRA.

DATES: We will consider comments received or postmarked on or before August 16, 2016.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking portal at: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–LE–2016–0067.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–LE–2016–0067; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide to us (see Public Comments in **SUPPLEMENTARY INFORMATION** below for more information).

FOR FURTHER INFORMATION CONTACT: Edward Grace, Deputy Assistant Director, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358–1949, fax (703) 358–1947.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be as accurate and effective as possible. The Service invites interested persons to submit written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to us in developing this rule will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports that recommended change.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments you send by email or fax or that you send to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

If you submit information via *http://www.regulations.gov*, your entire submission—including your personal identifying information—will be posted on the Web site. If you provide personal identifying information in a hard-copy comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of Law Enforcement, MS: OLE; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

Executive Summary

We propose to revise our regulations regarding seizure and administrative forfeiture of property and the disposal of any property forfeited or abandoned to the United States (whether through administrative or judicial forfeiture) under various laws that the Service administers. The proposed regulations will set forth the procedures that we use for the seizure, bonded release, appraisement, administrative proceeding, petition for remission, and disposal of items subject to forfeiture and will reflect the procedures required by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). This proposed rule will make the current regulations easier to understand through the use of simpler language and will also more clearly explain the procedures used in administrative forfeiture proceedings, make the process more efficient, and make the Service's seizure and forfeiture procedures more uniform with those of other agencies subject to CAFRA.

The Service is not unique in its seizure and administrative forfeiture authority. In general, all property subject to forfeiture under Federal law may be forfeited administratively by the enforcing Federal agency provided that the statutory authority for the forfeiture incorporates the Customs laws of 19 U.S.C. 1602 *et seq.* and further provided the property is neither real property nor personal property having a value of more than $500,000 (except as noted in 19 U.S.C. 1607(a)).

Since the enactment of CAFRA in 2000, the Service has implemented the forfeiture procedures imposed by the law through the authority of the Act and through written guidance setting forth practices for the issuance of notice of nonjudicial civil forfeiture proceedings, the availability of administrative and judicial processes for contesting the proposed forfeiture, and applicable deadlines for utilizing these processes. We are now updating the regulations in part 12 of title 50 of the Code of Federal Regulations (50 CFR part 12) to reflect these procedural changes.

Statutory Authority for Rulemaking

The Service has enforcement and oversight responsibilities under Federal wildlife conservation laws and regulations. The regulations in 50 CFR part 12 establish procedures relating to property seized or subject to administrative forfeiture as well as to the disposal of any property forfeited or abandoned to the United States under various laws enforced by the Service. Authority to seize and conduct administrative forfeiture and/or to dispose of property forfeited or abandoned to the United States whether through administrative or judicial forfeiture is granted under the following statutes:

- The Bald and Golden Eagle Protection Act, 16 U.S.C. 668 *et seq.* (BGEPA);
- the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd–ee;
- the Migratory Bird Treaty Act, 16 U.S.C. 704, 706–707, 712 (MBTA);

- the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718 *et seq.*;
- the Airborne Hunting Act, 16 U.S.C. 742j–1;
- the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*;
- the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA);
- the Marine Mammal Protection Act of 1972, 16 U.S.C. 1375–1377, 1382;
- the Lacey Act, 18 U.S.C. 42;
- the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*;
- the Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 *et seq.*;
- the Antarctic Conservation Act, 16 U.S.C. 2401 *et seq.*;
- the Archeological Resources Protection Act, 16 U.S.C. 470 *et seq.*;
- the Paleontological Resources Preservation Act, 16 U.S.C. 470aaa *et seq.*; and
- the Native American Graves Protection and Repatriation Act, 16 U.S.C. 3001 *et seq.*

Purpose of Proposed Rulemaking

CAFRA (Pub. L. 106–185) superimposes specific procedural requirements over the procedures in various forfeiture laws in existence prior to CAFRA's enactment. We are proposing a revision of 50 CFR part 12 to reflect in one place the CAFRA procedural overlay and to make changes to increase the efficiency of the regulations, such as allowing the publication of notices through the internet and streamlining the process for claims and petitions for remission. The purposes of the civil forfeiture laws enforced by the Service are remedial, among other things because forfeiture removes unlawful wildlife from society and is based upon the unlawful use of that wildlife.

Section-by-Section Analysis

The following parts of the preamble explain the proposed rule and present a discussion of the substantive issues of each section.

Proposed Changes to Subpart A of 50 CFR Part 12—General Provisions

We are proposing to change the section titles in subpart A. Otherwise, proposed §§ 12.1–12.6 are largely the same as current §§ 12.1–12.6.

Section 12.1—What is the purpose of these regulations?

The purpose of these proposed regulations is essentially unchanged from the purpose stated in the current § 12.1.

Section 12.2—What is the scope of these regulations?

The list of laws to which these regulations apply has been expanded. You can view this list in the corresponding section of the proposed regulations at the end of this document.

Section 12.3—What definitions do I need to know?

We are proposing to remove the definitions of the following terms: "Attorney General," "disposal," and "domestic value," and add the word "designee" to the definition of "Solicitor." We are also proposing to add definitions for the following terms: Abandon, administrative forfeiture, authorized officer, claim, contraband, declaration of forfeiture, detention, directed re-export, Director, interested party or parties, other property that is illegal to possess, petition for remission, property subject to administrative forfeiture, property subject to forfeiture, value, and we.

Abandon: Abandon means to relinquish to the United States all legal right you have to own, claim, or possess property seized by the Service, and to forever give up any right, title, and interest you have in the property, and to waive any further rights or proceedings relative to the property other than whatever rights to seek relief expressly were reserved in the abandonment document you signed.

Administrative forfeiture: Administrative forfeiture means the process by which property may be forfeited by a seizing agency rather than through a judicial proceeding. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

Authorized officer: Authorized officer means a person or entity who is acting as an agent, trustee, partner, corporate officer, director, supervisory employee, or any other representative designated to act on behalf of a corporation, partnership, or individual asserting that they are an interested party.

Claim: Claim means a written declaration regarding property for which the Service has proposed forfeiture that meets the statutory requirements of 18 U.S.C. 983(a)(2), including (1) timely submission, (2) containing required information regarding identification of the specific property being claimed, (3) stating the claimant's interest in the property, and (4) made under oath subject to penalty of perjury. A claim in effect causes a forfeiture proceeding begun administratively to be transferred by the Department of Justice to Federal court, since once a claim is filed seeking civil judicial forfeiture, the Service will forward the matter, through the Solicitor's Office, to the U.S. Department of Justice for filing as a civil judicial forfeiture action. Once a claim is referred, all administrative proceedings are terminated. See *Von Neuman* v. *United States*, 660 F.2d 1319, 1326 (9th Cir. 1981), cert. granted and judgment vacated on other grounds, 462 U.S. 1101 (1983) ("Once a case is referred for judicial action, the administrative proceedings on a petition for remission must cease" (citing 19 CFR 171.2)); see also 18 U.S.C. 983(a)(3); 19 U.S.C. 1608.

Contraband: Contraband means any fish, wildlife, or plant that either (1) by its very nature is illegal to import, export, or possess; or (2) if not inherently illegal in nature, becomes illegal because it has been taken, possessed, imported, exported, acquired, transported, purchased, sold, or offered for sale or purchased contrary to law.

A definition of "contraband" is included in these proposed regulations to address the contraband exemption to three of the procedures imposed by CAFRA on the civil forfeitures covered by these proposed part 12 regulations. These three procedures include certain types of seized property provisions contained in 18 U.S.C. 983(a)(1)(F) and 983(f) and the "innocent owner defense" of 18 U.S.C. 983(d). As discussed above, CAFRA sets forth the procedures used in all civil forfeitures under Federal law unless the particular forfeiture statute is specifically exempted in 18 U.S.C. 983(i)(2). *United States* v. *144,774 Lbs. of Blue King Crab*, 410 F. 3d 1131, 1134 (9th Cir. 2005). As such, CAFRA applies to the civil forfeitures covered by these proposed regulations.

CAFRA includes, in 18 U.S.C. 983(f), a process for obtaining the release of certain types of seized property while a civil forfeiture action is pending. Contraband is one type of property that is specifically exempt from such releases (18 U.S.C. 983(f)(8)(A)). CAFRA also provides, in 18 U.S.C. 983(a)(1)(F), for the release and return of seized property in the event of a failure to send a required notice of seizure. Again, however, contraband is specifically exempt from these release provisions, as is other property that the person from whom the property was seized may not legally possess. Both of these CAFRA release provisions, including their contraband exemptions, are reflected in these proposed part 12 regulations, at proposed §§ 12.14 and 12.36.

CAFRA's "innocent owner defense" also expressly excludes "contraband," as well as "other property that it is illegal to possess" (18 U.S.C. 983(d)(4)). The "innocent owner defense," which is reflected at proposed § 12.33(c)(6), is an affirmative defense to civil forfeiture in which the burden of proof rests with the claimant to show the following: (1) If the claimant had an ownership interest in the property at the time of the offense, the claimant either had a lack of knowledge of the conduct giving rise to forfeiture, or, upon learning of the conduct, did all that reasonably could be expected under the circumstances to terminate such use of the property; or (2) if the claimant acquires the property after the conduct giving rise to the property, the claimant is a bona fide purchaser for value who did not know or was reasonably without cause to believe that the property was subject to forfeiture. Congress expressly used two different phrases, separated by the word "or" to describe the circumstances under which the "innocent owner defense" is unavailable: "no person may assert an ownership interest under this subsection [18 U.S.C. 983(d)(4)] in contraband or other property that it is illegal to possess." Each of these phrases is separate and distinct from the other, and they mean two separate things. *Blue King Crab*, 410 F. 3d at 1135; *United States* v. *1866.75 Board Feet and 11 Doors and Casings*, 587 F. Supp. 2d 740, 751 (E.D.Va. 2008); *Conservation Force* v. *Salazar*, 677 F. Supp. 2d 1203, 1207 (N.D.Ca. 2009), *aff'd*, 646 F.3d 1240 (9th Cir. 2011). Consequently, these two phrases are being separately defined in these proposed regulations.

Although the term "contraband" is not explicitly defined in CAFRA, this phrase does have an ordinary, common meaning of "[g]oods that are unlawful to import, export, or possess," and can be of either the "per se" (property whose possession is unlawful regardless of how it is used) or "derivative" (property whose possession becomes unlawful when it is used in an unlawful manner) variety. *Black's Law Dictionary* 365 (9th ed. 2009). Consistent with this common meaning, courts have concluded that "contraband" includes for purposes of the CAFRA "innocent owner defense" property that either (1) by its very nature is illegal to import, export, or possess, or (2) if not inherently illegal in nature, becomes illegal through the manner or circumstances by which it is used, possessed, or acquired. *Conservation Force*, 677 F. Supp. 2d at 1208; *United States* v. *Approximately 600 Sacks of Green Coffee Beans*, 381 F. Supp. 2d 57 (D.P.R. 2005). This approach to "contraband" is also consistent with cases decided before the enactment in 2000 of CAFRA. See, *e.g.*, *United States* v. *Molt*, 599 F. 2d 1217–18, fn. 1 (3d Cir. 1079) (Under the Lacey Act, unlawfully taken foreign wildlife is a "contraband article."); *United States* v. *The Proceeds from the Sale of Approximately 15,538 Panulirus argus Lobster Tails*, 834 F. Supp. 385, 391 (S.D. Fla. 1993) (No innocent owner defense available because "the [defendant] lobster tails were themselves contraband. . . .") The definition of "contraband" included in these proposed regulations is consistent with the common meaning and case law interpretation of that term.

Application of this definition will mean that petitioners and claimants will not be able to assert the innocent owner defense if, for example, their wildlife is imported without proper permits and so their possession, and/or transport, sale, receipt, etc., violates Federal law. While it is not illegal to import many types of wildlife into the United States, a failure to present required permits will transform the wildlife into contraband. Similarly, taking wildlife in violation of State law and placing it in interstate commerce in violation of Federal law may also transform that wildlife into contraband.

Such results are consistent with the majority of pre-CAFRA authority, which held that a good faith defense was not available in forfeiture proceedings based on violations of wildlife protection laws, including the ESA. *United States* v. *Fifty-Three (53) Eclectus Parrots*, 685 F. 2d 1131 (9th Cir. 1982) (forfeiture under the Tariff Act of 1930 of birds imported in violation of foreign wildlife laws); *United States* v. *One Handbag of Crocodilus Species*, 856 F. Supp. 128 (E.D.N.Y. 1994) (forfeiture of wildlife products imported in violation of the Convention on International Trade in Endangered Species (CITES) and the ESA); *United States* v. *Proceeds From the Sale of Approximately 15,538 Panulirus argus Lobster Tails*, 834 F. Supp. 385 (S.D. Fla. 1993) (forfeiture of wildlife imported in violation of the Lacey Act); *United States* v. *1,000 Raw Skins of Caiman crocodilus yacare*, No. CV–88–3476, 1991 U.S. Dist. LEXIS 3535 (E.D.N.Y. 1991) (forfeiture of wildlife products imported in violation of CITES and the ESA and the Lacey Act); *Contra United States* v. *3,210 Crusted Sides of Caiman crocodilus yacare*, 636 F. Supp. 1281 (S.D. Fla. 1986) (forfeiture of wildlife products imported in violation of CITES and the ESA and the Lacey Act—claimants unable to sustain burden of showing by preponderance of the evidence that the elements of innocent owner defense existed, including that they lacked involvement, knowledge, or did all that was reasonably possible to prevent the proscribed use of their property).

The rationale for rejecting a good faith defense in the majority of wildlife forfeiture cases was that the application of strict liability in wildlife forfeiture actions is necessary to effect Congressional intent. To permit an importer to recover the property because he or she lacks culpability would lend support to the continued commercial traffic of the forbidden wildlife. Additionally, a foreseeable consequence would be to discourage diligent inquiry by the importer, allowing him or her to plead ignorance in the face of an import violation. Furthermore, it is not unreasonable to expect the importer to protect his or her interest by placing the risk of noncompliance on the supplier in negotiation of the sales agreement. *1,000 Raw Skins of Caiman crocodilus yacare*, 1991 U.S. Dist. LEXIS 3535 at *12, quoted in *One Handbag of Crocodilus Species*, 856 F. Supp. at 134.

Declaration of forfeiture means a written declaration by the Service or the Solicitor describing the property forfeited and stating the date, time, place, and reason for forfeiture. The declaration will also describe the date and manner in which notice of seizure and proposed forfeiture was sent to the property owner. If notice was never successfully sent, the declaration will describe efforts made to deliver any notice of seizure and proposed forfeiture.

Detention: Detention means the holding for further investigation of fish, wildlife, or plants and any associated property that is neither released nor seized.

Directed re-export: Directed re-export means the prompt export at the sole expense and risk to the importer or consignee of imported shipments.

Directed re-export may be offered by the Service for shipments that have been refused entry by the Service into the United States. If the importer or consignee chooses not to re-export when offered by the Service, then the shipment will not be cleared under 50 CFR part 14 for entry into the United States, and the Service, at its sole discretion, may or may not seize and initiate forfeiture proceedings. If forfeiture proceedings are not initiated, the refused shipment may be subject to Customs enforcement action. Directed re-export also may be offered by the Solicitor under § 12.34(e)(4) of this part for seized property as a condition of the remission decision. Section 12.34(e)(4) further clarifies that one of the options available when granting remission is to release the seized property for the sole and limited purpose of directed re-export. The importation of goods into the United States is not a fundamental right. See, *e.g., Ganadera Indus., S.A.* v. *Block*, 727 F. 2d 1156, 1160 (D.C. Cir. 1984). As discussed below in the discussion of § 12.34, Congress assumed that forfeiture would be sought instead of civil penalty in most illegal importation cases, and CITES encourages the use of forfeiture rather than return to the State of export or re-export so that specimens traded in violation of CITES do not enter into illegal trade. Nevertheless, under some circumstances, the appropriate response might be for the Service to allow re-export of wildlife imported in violation of Federal wildlife laws instead of pursuing forfeiture. The Solicitor and the Service have the discretion to consider directed re-export as an option provided that re-export will benefit the enforcement and administration of applicable wildlife laws.

Director: Director means the Director of the United States Fish and Wildlife Service, Department of the Interior, or an authorized representative (as defined in 50 CFR 10.12).

Interested party or parties: Interested party or parties means any person(s) who appears to be a person having an interest in the seized property under the criteria in § 12.11(a), based on the facts known to the seizing agency before a declaration of forfeiture is entered.

Other property that is illegal to possess: Other property that is illegal to possess means any fish or wildlife or any plants that may not be legally possessed or held due to extrinsic circumstances.

We include a definition of "other property that is illegal to possess" in these proposed regulations to address two specific exemptions from the procedures imposed by CAFRA on the civil forfeitures covered by these proposed regulations: From the "innocent owner defense" of 18 U.S.C. 983(d) and from the provisions of 18 U.S.C. 983(a)(1)(F) regarding the release of seized property in the event of a failure to send a required notice of seizure. The phrase "other property that is illegal to possess" includes property that becomes illegal to possess because of extrinsic circumstances. *United States* v. *144,774 Lbs. of Blue King Crab*, 410 F. 3d 1131, 1134 (9th Cir. 2005). The seized property does not have to be in itself illegal; rather, it is property that became illegal to possess owing to a specific set of circumstances. Id. at 1136; *United States* v. *1866.75 Board Feet and 11 Doors and Casings*, 587 F. Supp. 2d 740, 751 (E.D. Va. 2008); *Conservation Force* v. *Salazar*, 677 F. Supp. 2d 1203, 1207 (N.D. Ca. 2009), *aff'd*, 646 F.3d 1240 (9th Cir. 2011).

Circumstances that would make property other than contraband illegal to possess include taking, possessing, importing, exporting, acquiring, transporting, purchasing, selling or offering for sale wildlife contrary to law. In other words, the property becomes illegal to possess through the manner or circumstances by which it is used, possessed, or acquired. As a result, wildlife that may be possessed legally in some circumstances becomes illegal to possess in others. For example, as of the date of publication of these proposed regulations, individuals may import into the United States without CITES documents in personal baggage that is carried or checked on the same transport as the traveler a quantity of no more than 125 grams per person of any sturgeon (*Acipenseriformes*) caviar that is from a species of CITES Appendix II sturgeon not separately listed under the ESA (in 50 CFR part 17) as endangered or threatened. If, however, more than 125 grams per person is so imported without a valid CITES document, then all of the caviar becomes illegal to possess.

Petition for remission: Petition for remission means a request for the Solicitor to exercise equitable discretion and to release the property seized to you. Remission of forfeiture is committed to the discretion of the Solicitor's Office. In the case of administrative forfeiture, remission may be granted under the statutes authorizing forfeiture remissions only where the Solicitor finds in response to a petition the existence of "such mitigating circumstances as to justify the remission," and then only under such terms and conditions as are deemed reasonable and just.

Property subject to administrative forfeiture: Federal administrative forfeiture is the process by which a Federal agency seeks forfeiture of property to the United States after the Federal agency has seized the property under prescribed administrative procedures. In general, all property subject to forfeiture under Federal law may be forfeited administratively by the enforcing Federal agency provided that the statutory authority for the forfeiture incorporates the Customs laws of 19 U.S.C. 1602 *et seq.*, to the extent not inconsistent with the provisions of the incorporating wildlife laws (identified in § 12.2) pursuant to which forfeiture is sought and further provided the property is neither real property nor personal property having a value of more than $500,000 (except as noted in 19 U.S.C. 1607(a)).

Property subject to forfeiture: Property subject to forfeiture means all property that Federal law authorizes to be forfeited to the United States in any administrative forfeiture proceeding, in any civil judicial forfeiture, or any criminal forfeiture proceeding.

Solicitor: Solicitor means the Solicitor of the United States Department of the Interior or an authorized representative or designee.

Value: Value means the value of property as determined by the Service. For property having a legal market in the United States, the Service will use the reasonable declared value or the estimated market value at the time and place of seizure, if such or similar property was freely offered for sale between a willing seller and a willing buyer.

This proposed rule would make the Service responsible for determining the value of the item seized, whether or not the item had a declared value at the time of seizure. Declared value in papers filed may sometimes understate the value to avoid Customs and Border Protection (CBP) duties or overstate the value for insurance purposes. Therefore, value will be determined based on either reasonable declared value or estimated market value at the time and place of seizure.

We: We means the U.S. Fish and Wildlife Service.

Section 12.4—When and how must documents be filed or issued?

We propose to revise the language for the filing of documents as follows:

Proposed paragraph (a) will state that, whenever this part requires or allows you to file a document on or before a certain date, you are responsible for submitting that document so as to reach the Government office designated for receipt by the time specified. You may use the U.S. Postal Service, a commercial carrier, or electronic or facsimile transmission. We will consider the document filed on the date on which the document is received by the Government office designated for receipt. Acceptable evidence to establish the time of receipt by the Government office includes any time/date stamp placed by that office on the document, other documentary evidence of receipt maintained by that office, or oral testimony or statements of Government personnel.

Proposed paragraph (b) will indicate that, whenever this part requires or allows the Government to issue or file a document on or before a certain date, the document will be considered to be issued or filed on the date on which the document was placed in the U.S. mail service, delivered to a commercial carrier, or sent by facsimile transmission. Acceptable evidence to establish the time of filing or issuance by the Government includes any time/date stamp placed by that office on the document, other documentary evidence of receipt maintained by that office, or oral testimony or statements of Government personnel.

Section 12.5—How does the Service handle seizures made by other agencies?

We propose to clarify how the Service handles seizures made by other agencies.

Section 12.6—How does the Service release seized property under a bond?

We propose to clarify how the Service releases seized property under a bond. This bond requirement is distinct from the pre-CAFRA requirement that a bond be posted with any claim seeking judicial forfeiture. CAFRA eliminated 19 U.S.C. 1608's cost bond requirement. 18 U.S.C. 983(a)(2)(E).

Proposed Changes to Subpart B of 50 CFR Part 12—Preliminary Requirements

We are proposing to change the title of subpart B to "Notification Requirements" and also to change the section titles in the subpart and add sections. The Service is providing additional mechanisms for publication through electronic posting to the U.S. Fish and Wildlife Service Office of Law Enforcement Web site.

Section 12.11—How is personal notification of seizure and proposed forfeiture provided?

We propose to revise current § 12.11 to include any interested party who has not signed an abandonment form. We also propose to clarify how the Service or the Solicitor provides personal notification of seizure and proposed forfeiture.

The term "interested party" has been defined for purposes of notification. The timing of notice of seizure has been established as 60 days unless otherwise allowed pursuant to 18 U.S.C. 983(a). Items detained for identification or investigation only, pursuant to legal authority, and items detained as evidence in an ongoing criminal investigation and for less than 30 days will not be considered seized for purposes of forfeiture. These proposed regulations include provisions for the grounds for extending notification deadlines, how an extension is obtained, the format for notification of seizure, the deadlines to petition for remission, and electronic posting of notices.

Section 12.12—How is public notification of seizure and proposed forfeiture provided?

We propose to add this section to provide a mechanism for public posting of seized property both in the newspaper or where appropriate on an official government Web site.

Section 12.13—What does a declaration of forfeiture contain?

This new provision describes the requirements for what a declaration of forfeiture must contain.

Section 12.14—What happens if the required notification of seizure and proposed forfeiture is not provided?

We propose to clarify what happens if the Service or the Solicitor fails to provide the required notification of seizure and proposed forfeiture. This new section makes it clear that, where the owner is known and the property is not contraband or otherwise illegal to possess, the property must be returned if a timely notification of seizure and proposed forfeiture is not made, although the Service or the Solicitor may still seek to obtain a judicial forfeiture.

Proposed Changes to Subpart C of 50 CFR Part 12—Forfeiture Proceedings

We are proposing to change various section titles in subpart C.

Section 12.31—What are the basic types of forfeiture proceedings?

This new section provides an overview of this subpart.

Section 12.32—When may the Service or the Solicitor obtain administrative forfeiture of my property?

This new section describes what the law requires in order to commence administrative forfeiture proceedings and the existing legal requirements for obtaining forfeiture.

Section 12.33—How do I file a petition for remission of forfeiture requesting the release of my property?

This section is a rewrite of current § 12.24(b) with some additions. We propose to clarify when a petition for remission of forfeiture may be filed. The administrative process for requesting the release of seized property (through a petition for remission) is different than and is an alternative to the judicial process (through a claim). Either the administrative option or the judicial option may be used provided that the applicable filing deadlines are met.

Once an administrative forfeiture is commenced by the required provision of notice, you have the administrative option to file a petition for remission for the return of the seized property. A petition for remission asks the Solicitor to use equitable discretion in deciding whether to release the seized property pursuant to the petition. The Solicitor will render a decision on the petition pursuant to proposed § 12.34.

Alternatively, judicial relief may be sought by filing a claim, which causes the Government to pursue judicial forfeiture by filing a complaint for forfeiture in Federal court. Prior to 2014, the Service as a matter of administrative discretion (and not of statutory mandate) gave interested parties the opportunity to suspend or toll the time period available for filing a claim simply by filing a petition for remission seeking administrative relief. Under this practice, forfeiture proceedings were deemed to recommence in the event a petition for remission of forfeiture was denied, and the interested party was given the balance of time, if any, remaining to file a claim.

This practice of suspending all forfeiture time periods pending the outcome of a petition for remission was changed in 2014, and these proposed regulations expressly reflect the current practice that interested parties must elect to proceed either administratively or judicially, but they may not use these remedies sequentially. The CAFRA deadlines for the filing of a claim after the Service or the Solicitor commences an administrative forfeiture proceeding are not suspended or tolled pending a decision on a petition for remission.

This is because the administrative remedy for forfeiture (*i.e.,* sought through a petition for remission) is distinct from the judicial remedy initiated through a claim; forfeiture statutes and regulations "provide alternative, not sequential, administrative and legal remedies for an administrative forfeiture." *Conservation Force,* 646 F.3d at 1242. *Accord, Malladi Drugs & Pharmaceuticals, Ltd.* v. *Tandy,* 552 F. 3d 885, 890 (D.C. Cir. 2009). If a party pursues the administrative path by filing a petition for remission, and the petition is denied, then the "exclusive remedy" for setting aside an administrative declaration of forfeiture is that provided in CAFRA, in 18 U.S.C. 983(e), which is available only if the notice of forfeiture is not received. Put another way, in the event that an interested party receives proper notice of a proposed administrative forfeiture and chooses to pursue an administrative path, filing a petition for remission that is reviewed and denied, then that party has "waived the opportunity for judicial forfeiture proceedings." *Conservation Force,* 646 F.3d at 1242. *Accord, Pert* v. *United States,* 487 Fed. Appx. 396 (9th Cir. 2012) and *Phillips* v. *United States,* 464 Fed. Appx. 700 (9th Cir. 2011).

The proposed regulation has been clarified to reflect that remissions are an equitable remedy. The burden is on the petitioner to establish grounds for remission. If the petitioner does not provide the information requested in considering the petition for remission, the remission petition may be denied without further consideration. During the remission consideration, a valid forfeiture is presumed.

Section 12.34—What are the standards for remission of forfeiture?

We propose to clarify the standards for remission of forfeiture. Moreover, we propose to revise the requirements for remitting property that has been forfeited to more accurately reflect what the law requires in order for property to be remitted. Remission of forfeiture is discretionary; if the Solicitor "finds the existence of such mitigating circumstances as to justify the remission or mitigation" of the forfeiture or alleged forfeiture, the Solicitor "may remit or mitigate the same upon such terms and conditions as he deems reasonable and just" (19 U.S.C. 1618). Essentially, "[u]nlike the claimant who files a claim [to initiate judicial forfeiture proceedings], a petitioner seeking remission or mitigation of forfeiture does not necessarily contest the legitimacy of forfeiture. In fact, under remission/mitigation procedures, forfeitability is presumed and the petitioner seeks relief from forfeiture on fairness grounds." *Orallo* v. *United States,* 887 F. Supp. 1367, 1370 (D. Haw. 1995). Thus, "a petition for remission is a request for leniency, or an executive pardon, based upon the petitioner's representations of innocence or lack of knowledge of the underlying unlawful conduct." Id.

Remissions should not be a routine disposition for forfeited items. Where items clearly have been acquired, imported, exported, transported, or possessed contrary to law, the Solicitor granting remission must clearly show both the mitigating circumstances that allow the item to be remitted and that the terms and conditions attached to return of the item will be reasonable and just. See, *e.g.,* 16 U.S.C. 1540(e)(5) and 19 U.S.C. 1618.

Congress has limited the authority to grant remission to those factors set out in 19 U.S.C. 1618 (the remission provisions of the Customs laws) as those statutory provisions have been incorporated into the specific Federal wildlife conservation law under which nonjudicial civil forfeiture is pursued. For example, the ESA provides that the Customs laws provision regarding seizure and forfeiture (including remission) apply to seizures and forfeitures under the ESA only "insofar as such provisions of law are applicable and not inconsistent with the provisions" of that Act (16 U.S.C. 1540(e)(5)). Similarly, the Lacey Act Amendments of 1981 incorporate the seizure and forfeiture (including remission) provisions of the Customs law with the caveat of "insofar as such provisions of law are applicable and not inconsistent with the provisions of" that law (16 U.S.C. 3374(b)). Also by way of example, the Bald and Golden Eagle Protection Act provides that the Customs laws regarding seizure and forfeiture (including remission) apply "insofar as such provisions of law are applicable and not inconsistent with the provisions of" that Act (16 U.S.C. 668b(c)).

As a consequence of these requirements for consistency with the incorporating Federal wildlife conservation law, any consideration of remission of forfeiture must not only take into account the factors in 19 U.S.C. 1618 but also any other applicable Federal wildlife laws. This includes, as applicable, U.S. treaty obligations under CITES, restrictions on species listed under the ESA as endangered or threatened, and obligations under the Lacey Act Amendments of 1981 to provide support for other countries' conservation laws.

Because of this provision, for example, Appendix I remissions are disfavored. CITES provides that "[t]rade in specimens of these [Appendix I] species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances" (CITES art. 2(1); see also CITES Res. Conf. 12.3 (Rev. CoP16) recognizing "the need for Parties to be particularly vigilant regarding the issuance of permits and certificates for very valuable specimens of species included in Appendix I").

The CITES parties are directed to enforce the treaty through measures including "confiscation" of illegally traded specimens (CITES art. 8(1); see also CITES Res. Conf. 9.9 "[T]he seizure and confiscation of such specimens are generally preferable to the definitive refusal of the import of the specimens . . . ."). Article XIV of CITES explicitly recognizes parties' rights to adopt stricter national measures to restrict or prohibit trade, taking, possession, or transport of any wildlife or plant species, including those listed in the CITES Appendices. CITES art. 14(1); see *H.L. Justin Co. & Sons, Inc.* v. *Deukmejian,* 702 F. 2d 758, 759 n. 2 (9th Cir. 1983) (holding that Article XIV showed that CITES did not bar stricter State law); see also 50 CFR 23.3 (noting that permit applicants must comply with restrictions over and above those imposed by CITES).

The parties to CITES have observed "that false and invalid permits and certificates are used more and more often for fraudulent purposes and that appropriate measures are needed to prevent such documents from being accepted" (CITES Res. Conf. 12.3 (Rev. CoP16)). They recognized "the need for Parties to be particularly vigilant regarding the issuance of permits and certificates for" specimens of Appendix I species such as leopard trophies. Id.; see also CITES Res. Conf. 11.3 (Rev. CoP16) (urging parties "to strictly verify the documents originating from [producing] countries"). And they considered "that the retrospective issuance of permits and certificates has an increasingly negative impact on the possibilities for properly enforcing the Convention and leads to the creation of loopholes for illegal trade." Id.

The parties accordingly recommended that: (1) "Parties refuse to accept any permit or certificate that is invalid, including authentic documents that do not contain all the required information," Id. 14(d); (2) that export permits "may not be accepted to authorize export . . . except during [their] period of validity," Id. 2(g); (3) that importing countries "not accept permits or certificates that were issued retrospectively," except in limited circumstances" Id. 13(b); and that exporting countries neither "issue CITES permits . . . retrospectively" nor "provide exporters . . . with declarations about the legality of exports . . . of specimens having left [the] country without the required CITES documents," Id. 13(a). The Resolutions adopted at the Conferences of the Parties to CITES are not inherently binding on the United States or other parties, but it is reasonable for Federal agencies to rely upon them when implementing CITES. See *Castlewood Prods., L.L.C.* v. *Norton,* 365 F. 3d 1076, 1084 (D.C. Cir. 2004). The ESA implements CITES by making it unlawful "to trade in any specimens contrary to the provisions of [CITES], or to possess any specimens traded contrary to the provisions of [CITES]." Id. § 1538(c)(1). "Congress implemented the CITES into U.S. law in the [ESA].

The ESA makes it unlawful to 'engage in any trade in any specimens,' or 'possess any specimens traded,' contrary to the provisions of the [CITES] and authorizes the Secretary of the Interior to promulgate regulations to enforce the ESA. 16 U.S.C. 1538(c)(1) and 1540(f). The CITES regulates the trade of those endangered species of fish, wildlife, and plants listed in its appendices. See CITES, art. II, 27 U.S.T. at 1092. The degree of trade regulation under CITES depends on the appendix in which a specimen is listed." *United States* v. *Norris*, 452 F.3d 1275, 1278 (11th Cir. 2006).

The ESA also imposes a burden on the holder of a CITES permit to affirmatively prove that it is valid. 16 U.S.C. 1539(g). Congress acknowledged that forfeiture is an important tool in many illegal importation cases. See H.R. Rep. No. 95–1625, at 21 (1978), reprinted in 1978 U.S.C.C.A.N. 9453, 9476. CITES favors forfeiture as a remedy for illegally traded articles, see art. 8(1)(b), and the parties thereto have encouraged its use, see CITES Res. Conf. 9.9 (recognizing "that the return by the importing Party to the State of export or re-export of specimens that have been traded in violation of the Convention may result later in such specimens being entered into illegal trade unless measures are taken by the Parties concerned to prevent this" and, therefore, finding "confiscation . . . generally preferable"); 72 FR 48415; August 23, 2017 ("To ensure that specimens traded in violation of CITES do not re-enter illegal trade, Parties are urged to consider seizure of specimens, rather than refusal of entry of the shipment"); *cf. Austin* v. *United States,* 509 U.S. 602, 621 (1993) ("[W]e have recognized that the forfeiture of contraband itself may be characterized as remedial because it removes dangerous or illegal items from society.")

The need to maintain the integrity of the CITES permitting system must be considered when evaluating the equities presented in petitions and supplemental petitions for remission. Individuals play an important role in the CITES permitting system. Foreign exporters must include required CITES permits and certificates with their shipments to the United States. However, the U.S. importer bears personal responsibility for obtaining a valid permit before commencing an activity for which a permit is required by 50 CFR part 23 (except as provided under very specific situations) and assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permits. 50 CFR 13.1(a), 13.50. Importantly, the U.S. importer initiates the import and, as a consequence, has the ability to exercise control over his or her foreign suppliers. Congress clearly intended that individual importers bear some penalty in the event that wildlife specimens were traded contrary to the provisions of CITES, by providing that, among other things, it is illegal for persons subject to the jurisdiction of the United States to possess any specimens traded contrary to the provisions of CITES and providing for forfeiture of "all" wildlife possessed or imported in violation of ESA's prohibition on trade contrary to the provision of CITES. 16 U.S.C. 1538(c), 1540(e)(4)(A).

In all instances, remission of forfeiture of wildlife seized by the Service may be granted only if the Solicitor's Office finds in response to a petition the existence of "such mitigating circumstances as to justify the remission" and then only under such terms and conditions as are deemed "reasonable and just." 19 U.S.C. 1618.

Section 12.34(e) of these proposed regulations sets out a number of mitigating factors that may be considered in determining whether or not to grant remission. One of these factors is whether the petitioner has taken meaningful steps, including the use of contractual or monetary mechanisms, to prevent the violations that occurred. One of the relevant considerations in applying this factor to wildlife imports is whether the petitioner has undertaken diligent inquiry into the compliance capability and record of any foreign supplier. Rewarding ignorance of an import violation through remission could discourage the diligent inquiry that might have prevented the violation from occurring. Other considerations include whether the petitioner has attempted to protect his or her interest by placing the risk of noncompliance on the supplier in the negotiation of the sales or services agreement.

Notably, the sole purpose of the § 12.34(e) factors is for consideration of whether remission should be granted and not for any other use, such as application of the "innocent owner defense" under CAFRA. The factors stated are not intended to be all inclusive and do not constitute authority in and of themselves. In all instances, however, all remission decisions must be made with due consideration for the cumulative conservation impacts of the remission including whether the item is an Appendix I, II, or III species under CITES or is listed as threatened or endangered under the ESA, whether the violation increased the regulatory burden on government agencies, and whether remission may have an adverse effect on the integrity of any applicable permitting system or may provide an incentive to third parties to avoid meeting CITES requirements.

Section 12.34(e) of these proposed regulations provides examples of the type of terms and conditions that may be set for remission. Again, these are examples only and are not intended to be all inclusive. In all instances, the terms and conditions imposed must be "reasonable and just," as required by 19 U.S.C. 1618.

Section 12.34(e) provides that the Solicitor, at his or her sole discretion, may determine to settle completely or partially at the same time as remission is granted any civil penalty claim against the property owner arising from the owner's violation of Federal wildlife conservation laws. Forfeiture proceedings are brought against the "guilty property" itself, and as such are in the nature of an *in rem* proceeding, in which the property is the defendant and not the property owner. Importantly, forfeiture does not provide relief from potential liability for civil penalties that may be sought from the individuals or entities that actually violated the law. To expedite resolution of such potential civil liability, proposed § 12.34(e) allows, at the sole discretion of the Solicitor, for complete or partial settlement of civil penalties provided certain conditions are met. Consistent with the purpose of expediting resolution, one of the conditions to civil penalty settlement is that the property owner agrees to waive any notice of violation and notice of assessment required by 50 CFR part 11 and the opportunity for a hearing.

Section 12.35—How will the Solicitor notify me of its decision on my petition for remission?

This is a new section derived from the current § 12.24(g). We propose to clarify how decisions are made on petitions for remission. This new provision makes it clear that you should file a supplemental petition only where you have new evidence or evidence that has not previously been considered.

Section 12.36—How do I file a claim to get back my seized property?

We propose to clarify the procedures for filing a claim to get back seized property. This proposed rule would also explicitly require that a claim include any documentary evidence relied on and that such claims are made under penalty of perjury.

Section 12.37—Can I get my property back while the claim is pending?

This is a new provision allowing forfeited property to be retained while a claim is pending to avoid substantial hardship to the claimant provided that the requirements of 18 U.S.C. 983(f) are met.

Section 12.38—What happens if my property is subject to civil judicial actions to obtain forfeiture?

We propose to clarify what happens if property is subject to civil actions to obtain forfeiture. This new section describes the process for seeking judicial forfeiture under the applicable laws.

Proposed Changes to Subpart D of 50 CFR Part 12—Disposal of Forfeited or Abandoned Property

We are proposing to change the title of subpart D to "Abandonment Procedures."

Section 12.51—May I simply abandon my interest in the property?

We propose to clarify how property can be abandoned.

Section 12.52—Can I file a petition for remission for my abandoned property?

If you have agreed to abandon property, then your right to seek relief is limited to whatever process expressly was reserved in the abandonment document you signed. For example, the Fish and Wildlife Abandonment Form (Service Form 3–2096) or U.S. Customs and Border Protection forms used to abandon property may state that you are abandoning all claim to the property identified in the form and are waiving any further rights to proceedings relative to those articles other than the right to file a petition for administrative relief within a specified time period. Consequently, if you have so agreed to abandon your property, then you have no right to file a claim requesting judicial forfeiture, but are limited to seeking administrative relief within any time periods specified in the signed abandonment form.

Proposed Changes to Subpart E of 50 CFR Part 12—Restoration of Proceeds and Recovery of Storage Costs

We are proposing to change the title of subpart E to "Disposal of Forfeited or Abandoned Property." This proposed subpart is largely based on the regulations in current subpart D.

Section 12.61—What is the purpose of this subpart?

The purpose of this subpart is to describe the proposed procedures the Service will follow for the disposal of forfeited or abandoned property. This purpose is unchanged from the current § 12.30.

Section 12.62—How does the Service keep track of forfeited or abandoned property?

This proposed section is only slightly changed from the current regulations at § 12.31.

Section 12.63—When may the Service return live fish, wildlife, or plants to the wild?

We propose to clarify when the Service may return live fish, wildlife, or plants to the wild. This section is basically unchanged from the current regulations at § 12.34.

Section 12.64—How does forfeiture or abandonment affect the status of the property?

This proposed section is intended to make it clear that, although the prior illegal status of the property ceases with forfeiture or abandonment, any subsequent owner of that property must comply with all applicable laws and regulations.

Section 12.65—How does the Service dispose of forfeited or abandoned property?

We propose to clarify how the Service disposes of forfeited or abandoned property. This proposed rule makes provision for donation of forfeited and abandoned items used in traditional cultural practices to members of tribes. Eagle parts and feathers may be donated only to the National Eagle and Wildlife Property Repository for allocation through that established process.

Section 12.66—How does the Service dispose of seized injurious fish or wildlife?

We propose to clarify how the Service disposes of seized injurious fish or wildlife. The section reiterates and clarifies the Service's authority to dispose of injurious wildlife and to recover costs associated with disposal. Specifically, this new section provides for re-export or destruction of injurious species.

Section 12.67—When may the Service donate forfeited or abandoned property?

This section is largely unchanged from current § 12.36, except, because of food safety concerns, the Service will no longer donate forfeited and abandoned wildlife for human consumption.

Section 12.68—When may the Service loan forfeited or abandoned property?

We propose to clarify when the Service may loan forfeited or abandoned property. This section now also makes it clear that recipients may not sell loaned fish, wildlife, or plants or their offspring.

Section 12.69—When may the Service sell forfeited or abandoned property?

We propose to clarify when the Service may sell forfeited or abandoned property. This section is largely unchanged from current regulations at § 12.37.

Section 12.70—When may the Service destroy forfeited or abandoned property?

We propose to clarify when the Service may destroy forfeited or abandoned property. This proposed section now makes specific provisions for destruction of forfeited and abandoned wildlife to happen only in compliance with applicable Federal health, safety, and environmental laws including disposal of any resulting waste.

Proposed Changes to Subpart F of 50 CFR Part 12—Return of Property

We are proposing to change the title of subpart F to "Recovery of Storage Costs and Return of Property."

Section 12.81—When can the Service assess fees for costs incurred by the transfer, boarding, handling, or storage of property seized or forfeited?

This proposed section is basically unchanged from the current regulations at § 12.42.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Department has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. A Small Entity Compliance Guide is not required.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, the agency must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (such as small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. Most of the businesses that the Service will initiate administrative forfeiture proceedings against would be considered small businesses as defined under the Regulatory Flexibility Act. These businesses would be located in many different economic sectors but would generally fall within the size standards established by the Small Business Administration for small businesses.

We have determined that this action will not have a significant economic impact on a substantial number of small entities because the purpose of this proposed rule is to make our regulations governing the seizure, bonded release, appraisement, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service, consistent with CAFRA. Small businesses will actually have more freedom in contesting administrative forfeitures if this proposed rule is finalized because CAFRA waived the requirement to file a cash bond before filing a claim for property. Therefore, we are certifying that, if made final as proposed, this rule will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as it will not have an annual effect on the economy of $100 million or more. Moreover, this proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The changes to the regulations contained in this proposed rule will ensure that 50 CFR part 12 complies with CAFRA, as well as clarifying what procedures are available to claim items potentially subject to forfeiture. Finally, this proposed rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because foreign-based enterprises are subject to the same procedures as U.S.-based enterprises relating to property seized or subject to administrative forfeiture under various laws enforced by the Service.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

We are the lead agency for enforcing numerous conservation acts and executive orders, regulating wildlife trade through the declaration process, issuing permits to conduct activities affecting wildlife and their habitats, and carrying out U.S. obligations under CITES. No small government assistance or impact is expected as a result of this proposed rule. The changes to the regulations contained in this proposed rule will ensure that 50 CFR part 12 complies with CAFRA, as well as clarify what procedures are available to claim items potentially subject to forfeiture.

This proposed rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of $100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This proposed rule will not result in any combined expenditure by State, local, or tribal governments.

Executive Order 12630 (Takings)

Under Executive Order 12630, this proposed rule does not have significant takings implications nor will it affect any constitutionally protected property rights. This proposed rule has no private property takings implications as defined in Executive Order 12630 because the Executive Order specifically exempts seizure and forfeiture of property for violations of law.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. This proposed rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government because State wildlife agencies will forfeit items under their own applicable laws and regulations.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The purpose of this proposed rule is to simplify and update our regulations regarding seizure and forfeiture of property. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*). This rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This proposed rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2 (g) and 6.3 (D). This proposed rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This proposed rule is categorically excluded from further National Environmental Policy Act requirements, under 43 CFR 46.210(d), (i). These categorical exclusions address policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

Endangered Species Act

Section 7 of the ESA, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "ensure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat. . . ." We found that no section 7 consultation under the ESA was required for this proposed rule.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members are subject to the same procedures as other individuals relating to property seized or subject to administrative forfeiture under various laws enforced by the Service, except for proposed § 12.65(a)(2), which is wholly beneficial to tribal members.

Executive Order 13211 (Energy Supply, Distribution, or Use)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions that significantly affect energy supply, distribution, and use. Because this proposed rule applies only to U.S. Government administrative forfeiture procedures, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 12

Administrative practice and procedure, Exports, Fish, Imports, Plants, Seizures and forfeitures, Surety bonds, Transportation, Wildlife.

For the reasons described above, we propose to revise part 12, subchapter B of Chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 12—SEIZURE AND FORFEITURE PROCEDURES

Subpart A—General Provisions

Sec.
12.1 What is the purpose of the regulations in this part?
12.2 What is the scope of the regulations in this part?
12.3 What definitions do I need to know?
12.4 When and how must documents be filed or issued?
12.5 How does the Service handle seizures made by other agencies?
12.6 How does the Service release seized property under a bond?

Subpart B—Notification Requirements

Sec.
12.11 How is personal notification of seizure and proposed forfeiture provided?
12.12 How is public notification of seizure and proposed forfeiture provided?
12.13 What does a declaration of forfeiture contain?
12.14 What happens if the required notification of seizure and proposed forfeiture is not provided?

Subpart C—Forfeiture Proceedings

Sec.
12.31 What are the basic types of forfeiture proceedings
12.32 When may the Service or the Solicitor obtain administrative forfeiture of my property?
12.33 How do I file a petition for remission of forfeiture requesting the release of my property?
12.34 What are the standards for remission of forfeiture?
12.35 How will the Solicitor notify me of its decision on my petition for remission?
12.36 How do I file a claim to get back my seized property?
12.37 Can I get my property back while the claim is pending?
12.38 What happens if my property is subject to civil judicial actions to obtain forfeiture?

Subpart D—Abandonment Procedures

Sec.
12.51 May I simply abandon my interest in the property?
12.52 Can I file a petition for remission for my abandoned property?

Subpart E—Disposal of Forfeited or Abandoned Property

Sec.
12.61 What is the purpose of this subpart?
12.62 How does the Service keep track of forfeited or abandoned property?
12.63 When may the Service return live fish, wildlife, or plants to the wild?
12.64 How does forfeiture or abandonment affect the status of the property?
12.65 How does the Service dispose of forfeited or abandoned property?
12.66 How does the Service dispose of seized injurious fish or wildlife?
12.67 When may the Service donate forfeited or abandoned property?
12.68 When may the Service loan forfeited or abandoned property?
12.69 When may the Service sell forfeited or abandoned property?
12.70 When may the Service destroy forfeited or abandoned property?

Subpart F—Recovery of Storage Costs and Return of Property

Sec.
12.81 When can the Service assess fees for costs incurred by the transfer, boarding, handling, or storage of property seized or forfeited?

Authority: 16 U.S.C. 470, 470aaa *et seq.*, 668–668b, 668dd(e)–(f), 704, 706–707, 712, 718f–718g, 742j–l(d)–(f), 1375–1377, 1382, 1540, 2401 *et seq.*, 3001 *et seq.*, 3371 *et seq.*, 4201 *et seq.*, 5301 *et seq.*, 7421; 18 U.S.C. 43, 44, 983, 985; 19 U.S.C. 1602–1624; 28 U.S.C. 2465(b); 42 U.S.C. 1996; and E.O. 11987, 42 FR 26949.

Subpart A—General Provisions

§ 12.1 What is the purpose of the regulations in this part?

These regulations provide procedures that govern the seizure and administrative forfeiture or abandonment of property, as well as the disposal of such property, and the recovery of costs associated with handling and storage of seized property under various laws enforced by the Service.

§ 12.2 What is the scope of the regulations in this part?

(a) The regulations in this part apply to all property seized or subject to administrative forfeiture under any of the following laws:

(1) The Bald and Golden Eagle Protection Act, 16 U.S.C. 668 *et seq.;*

(2) The Airborne Hunting Act, 16 U.S.C. 742j–1;

(3) The Endangered Species Act, 16 U.S.C. 1531 *et seq.;*

(4) The Lacey Act, 18 U.S.C. 42;

(5) The Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;*

(6) The Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 *et seq.;*

(7) The Antarctic Conservation Act, 16 U.S.C. 2401 *et seq.;*

(8) The Paleontological Resources Protection Act 16 U.S.C. 470aaa *et seq.;* and

(9) The African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*

(b) These regulations apply to the disposal of any property forfeited or abandoned to the United States under any of the following laws:

(1) Any of the laws identified in paragraph (a) of this section;

(2) The National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd–668ee;

(3) The Migratory Bird Treaty Act, 16 U.S.C. 704, 706–707, 712 (MBTA);

(4) The Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718 *et seq.;*

(5) The Marine Mammal Protection Act of 1972, 16 U.S.C. 1375–1377, 1382;

(6) The Archeological Resources Protection Act, 16 U.S.C. 470 *et seq.;*

(7) The Native American Graves Protection and Repatriation Act, 16 U.S.C. 3001 *et seq.*

(c) This part applies to all forfeitures administered by the Service with the exception of seizures and forfeitures under the statutes listed under 18 U.S.C. 983(i). The authority under this part to conduct administrative forfeitures derives from the procedural provisions of the Customs and Border Protection laws (19 U.S.C. 1602–1618) where those provisions are incorporated by reference in the substantive forfeiture statutes enforced by the Service.

§ 12.3 What definitions do I need to know?

In addition to the definitions contained in parts 10, 14, 17, and 23 of this chapter, as well as other applicable Federal laws and regulations, in this part:

Abandon means to relinquish to the United States all legal right you have to own, claim, or possess property seized by the Service, and to forever give up any right, title, and interest in the property and waive any further rights or proceedings relative to the property other than whatever rights to seek relief expressly were reserved in the abandonment document you signed.

Administrative forfeiture means the process by which property may be forfeited by a seizing agency rather than through a judicial proceeding. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

Authorized officer means a person or entity who is acting as an agent, trustee, partner, corporate officer, director, supervisory employee, or any other representative designated to act on behalf of a corporation, partnership, or individual asserting that they are an interested party.

Claim means a written declaration regarding property for which the Service has proposed forfeiture, that meets the statutory requirements of 18 U.S.C. 983(a)(2), including:

(1) Timely submission;

(2) Containing required information regarding identification of the specific property being claimed;

(3) Stating the claimant's interest in the property;

(4) Requesting the initiation of judicial forfeiture proceedings; and

(5) Made under oath subject to penalty of perjury.

Contraband means any fish, wildlife, or plant that either:

(1) Is inherently illegal to import, export, or possess; or

(2) Has been taken, possessed, imported, exported, acquired, transported, purchased, sold, or offered for sale or purchase contrary to law.

Declaration of forfeiture means a written declaration by the Service or the Solicitor describing the property forfeited and stating the date, time, place, and reason for forfeiture. The declaration will also describe the date and manner in which notice of seizure and proposed forfeiture was sent to the property owner. If notice was never successfully sent, the declaration will describe efforts made to deliver any notice of seizure and proposed forfeiture.

Detention means the holding for further investigation of fish, wildlife, or plants and any associated property that is neither immediately released nor seized but is temporarily held by Service officers under 50 CFR part 14.

Directed re-export means the prompt export at the expense of the importer or consignee of imported shipments that have been refused entry by the Service into the United States.

Director means the Director of the United States Fish and Wildlife Service, Department of the Interior, or an authorized representative (as defined in 50 CFR 10.12).

Interested party or parties means any person(s) who appears to be a person having an interest under the criteria in § 12.11(a), based on the facts known to the seizing agency before a declaration of forfeiture is entered.

Other property that is illegal to possess means any fish, wildlife, or plants that may not be legally possessed or held due to extrinsic circumstances.

Petition for remission is a request in an administrative forfeiture proceeding for the Solicitor to exercise equitable discretion on behalf of the Department and to release the property seized. Remission of forfeiture is discretionary.

Property subject to administrative forfeiture means any property of the kinds described in 19 U.S.C. 1607(a) to the extent not inconsistent with the provisions of the incorporating wildlife laws (identified in § 12.2) pursuant to which forfeiture is sought.

Property subject to forfeiture means all property that Federal law authorizes to be forfeited to the United States in any administrative forfeiture proceeding, or in any civil judicial forfeiture, or in any criminal forfeiture proceeding.

Solicitor means the Solicitor of the U.S. Department of the Interior or an authorized representative or designee.

Value means the value of property as determined by the Service. For property having a legal market in the United States, the Service will use the reasonable declared value or the estimated market value at the time and place of seizure, if such or similar property was freely offered for sale between a willing seller and a willing buyer. For property that may not be sold in the United States, the Service will use other reasonable means, including, but not limited to, the Service's knowledge of sale prices in illegal markets or the replacement cost.

We means the U.S. Fish and Wildlife Service.

§ 12.4 When and how must documents be filed or issued?

(a) Whenever this part requires or allows you to file a document on or before a certain date, you are responsible for submitting that document so as to reach the Government office designated for receipt by the time specified. You may use the U.S. Postal Service (USPS), a commercial carrier, or electronic or facsimile transmission. We will consider the document filed on the date on which the document is received by the Government office designated for receipt. Acceptable evidence to establish the time of receipt by the Government office includes any official USPS receipt, commercial carrier signature log, time/date stamp placed by the Government on the document, other documentary evidence of receipt maintained by that Government office, or oral testimony or statements of Government personnel.

(b) Whenever this part requires or allows the Government to issue or file a document on or before a certain date, the document will be considered to be issued or filed on the date on which the document was placed in the USPS system, delivered to a commercial carrier, or sent by electronic or facsimile transmission. Acceptable evidence to establish the time of filing or issuance by the Government includes any official USPS sender's receipt, commercial carrier receipt log, and time/date stamp placed by the government office on the document, other documentary evidence of receipt maintained by that office, or oral testimony or statements of Government personnel.

§ 12.5 How does the Service handle seizures made by other agencies?

(a) If an authorized employee or officer of another Federal or State or local law enforcement agency seized your fish, wildlife, or plants or other property under any of the laws listed in § 12.2, the Service may request the delivery of the seized property to the appropriate Special Agent in Charge (SAC), Office of Law Enforcement, or to an authorized designee. The addresses for SACs are listed in § 2.2 of this subchapter, and telephone numbers are listed in § 10.22 of this subchapter. The SAC or authorized designee will hold the seized fish, wildlife, or plants or other property subject to forfeiture and arrange for its proper handling and care. Forfeiture proceedings must be initiated by notice to the interested parties within 90 days of the date of seizure by the Federal, State, or local law enforcement agency.

(b) If you use any U.S. Customs and Border Protection (CBP) form (forms may be amended or superseded) to voluntarily abandon any fish, wildlife, or plants or other property subject to forfeiture in lieu of Service Form 3–2096, Fish and Wildlife Abandonment Form, the Service may request that CBP transfer the property to the Service for final disposition.

§ 12.6 How does the Service release seized property under a bond?

(a) When an administrative forfeiture is pending, the Service may at its discretion accept an appearance bond or other security from you in place of any property authorized for seizure by civil forfeiture under any Act listed in § 12.2. If a judicial claim has been filed, then early release of property must be handled under the provisions of 18 U.S.C. 983(f).

(b) You may post an appearance bond or other security in place of seized property only if the Service, at its discretion, authorizes the acceptance of the bond or security and the following conditions are met:

(1) You must complete Service Form 3–2095, Cash Bond for Release of Seized Property;

(2) The Service may release your seized property only to you (the owner) or your designated representative; and

(3) Your possession of the property may not violate or undermine the purpose or policy of any applicable law or regulation.

Subpart B—Notification Requirements

§ 12.11 How is personal notification of seizure and proposed forfeiture provided?

An administrative forfeiture proceeding begins when notice is first published in accordance with § 12.12, or the first personal written notice is sent in accordance with the regulations in this section, whichever occurs first.

(a) *Manner of providing notice.* After seizing property subject to administrative forfeiture, the Service or the Solicitor, in addition to publishing notice of the seizure, will send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties. The notice of seizure and proposed forfeiture will not be sent to any person who signed an abandonment form. The notice of seizure and proposed forfeiture will be sent by U.S. registered or certified mail, express mail, or commercial carrier, all with proof of delivery and return receipt requested. The notice will be sent to an address that has been provided on shipping or other documents accompanying the property or on your permit or license application, unless the Service or the Solicitor has actual notice of a different address.

(b) *Content of personal written notice.* The personal written notice sent by the Service or the Solicitor will contain the following information:

(1) A description of the seized property;

(2) The name, title, and business address to whom any petition for remission or claim for judicial proceedings must be filed, as well as a seizure tag number;

(3) The date and place of seizure, and the estimated value of the property as determined under § 12.3;

(4) A reference to provisions of law or regulations under which the property is subject to forfeiture;

(5) A statement that the Service or the Solicitor intends to proceed with administrative forfeiture proceedings;

(6) The date when the personal written notice is sent;

(7) The deadline for filing claims for judicial forfeiture proceedings, which is 35 days after the personal written notice is sent, as well as the deadline for filing petitions for remission; and

(8) A statement that any interested party may file a claim or petition for remission by the deadline.

(c) *Date of personal notice.* Personal written notice is sent on the date when the Service or the Solicitor places the notice in the mail, delivers it to a commercial carrier, or otherwise sends it by means reasonably calculated to reach the interested party.

(d) *Timing of notification.* The Service or the Solicitor will notify you in writing of any seizure of your property as soon as practicable and not more than 60 days after the date of seizure. If property is detained at an international border or port of entry for the purpose of examination, testing, inspection, obtaining documentation, or other investigation relating to the importation or the exportation of the property, the 60-day period will begin to run when the period of detention ends, if the Service seizes the property for the purpose of forfeiture to the United States.

(e) *Exceptions to the 60-day notification requirement.* The exceptions in 18 U.S.C. 983(a)(1), including but not limited to the exceptions listed in this paragraph (e), apply to the notice requirement under paragraph (d) of this section.

(1) If the identity or interest of an interested party is determined after the seizure of the property but before entering a declaration of forfeiture, the Service or the Solicitor will send

written notice to such interested party under paragraph (a) of this section not more than 60 days after the date that the identity of the interested party or the interested party's interest is determined.

(2) For the purposes of this section, we do not consider property that has been refused entry, held for identification, held for an investigation as evidence, or detained for less than 30 days under part 14 of this chapter, to be seized.

(3) If, before the time period for sending notice expires, the Government files a civil judicial forfeiture action against the seized property and provides notice of such action as required by law, personal notice of administrative forfeiture is not required under paragraph (a) of this section.

(4) If, before the time period for sending notice expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either:

(i) Send notice within the 60 days specified under paragraph (a) of this section and continue the nonjudicial civil forfeiture proceeding, or

(ii) Terminate the nonjudicial civil forfeiture proceeding and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(f) *Extensions to the 60-day notification requirement.* The Director may extend the 60-day deadline for sending personal written notice under these regulations in a particular case one time, for a period not to exceed 30 days, unless further extended by a court, only if the Director determines that the notice may have an adverse result including endangering the life or physical safety of an individual, flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, or otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(g) *Deadlines for filing a petition for remission.* (1) You must file your petition for remission within 35 days from the date of the delivery of the notice of seizure and proposed forfeiture, if you or any interested party receives the notice of seizure and proposed forfeiture.

(2) If you do not receive the notice of seizure and proposed forfeiture, the petition for remission that you file must be received not later than 30 days from the date of last posting of the public notice of the seizure of the property.

§ 12.12 How is public notification of seizure and proposed forfeiture provided?

(a) After seizing property subject to administrative forfeiture, the Service will select from the following options a means of publication reasonably calculated to notify potential claimants of the seizure and the intent to forfeit and sell or otherwise dispose of the property:

(1) Publication once each week for at least three successive weeks in a newspaper generally circulated in the judicial district where the property was seized; or

(2) Posting a notice on the official government Internet site at *http://www.fws.gov/fwsforfeiture/* for at least 30 consecutive days.

(b) The published notice will:

(1) Describe the seized property;

(2) State the date, statutory basis, and place of seizure;

(3) State the deadline for filing a claim when personal written notice has not been received, at least 30 days after the date of final publication of the notice of seizure; and

(4) State the name, title, and business address to whom any petition for remission or claim for judicial proceedings must be filed.

§ 12.13 What does a declaration of forfeiture contain?

(a) If the seizing agency commences a timely proceeding against property subject to administrative forfeiture, and either no valid and timely claim is filed or the seized property is not released in response to a petition or supplemental petition for remission, the Service or the Solicitor will declare the property forfeited to the United States for disposition according to law. The declaration of forfeiture will have the same force and effect as a final decree and order of forfeiture in a Federal judicial forfeiture proceeding.

(b) The declaration of forfeiture will describe the property and state the date, time, place, and reason for the seizure of the property. The declaration of forfeiture will make reference to the notice of seizure and proposed forfeiture and describe the dates and manner in which the notice of seizure and proposed forfeiture was sent to you. If we have no proof of delivery to you of the notice of seizure and proposed forfeiture, the declaration of forfeiture will describe the efforts made to deliver the notice of seizure and proposed forfeiture to you.

§ 12.14 What happens if the required notification of seizure and proposed forfeiture is not provided?

Under 18 U.S.C. 983(a)(1)(F), if the Service or the Solicitor does not send notice of a seizure of property in accordance with that section to the person from whom the property was seized, and no extension of time was granted, the Government is required to return the property to that person, unless the property is contraband or other property that is illegal to possess. Any return of property under this section does not prejudice the right of the Government to commence a forfeiture proceeding at a later time.

Subpart C—Forfeiture Proceedings

§ 12.31 What are the basic types of forfeiture proceedings?

(a) Property seized for violations of the laws identified in § 12.2 and subject to forfeiture may be forfeited, depending upon the nature of the property and the law involved, through criminal forfeiture proceedings, civil judicial procedures, or civil nonjudicial (administrative) procedures.

(b) The process used also may be determined in certain circumstances by the actions of an interested party. For example, a person claiming property seized in a nonjudicial (administrative) civil forfeiture proceeding under a civil forfeiture statute may choose to file a claim after the seizure rather than to pursue administrative relief through a petition for remission of forfeiture.

(c) A claim that is timely and contains the information required by § 12.36 will terminate the administrative proceeding and will cause the Service, through the Solicitor, to refer the claim to the U.S. Department of Justice with the request that a judicial forfeiture action be instituted in Federal court.

§ 12.32 When may the Service or the Solicitor obtain administrative forfeiture of my property?

If your fish, wildlife, or plants or other property is subject to forfeiture under any Act listed in § 12.2, and it is also property subject to administrative forfeiture, the Service or the Solicitor may initiate an administrative forfeiture proceeding of the property under the forfeiture procedures described in this subpart.

§ 12.33 How do I file a petition for remission of forfeiture requesting the release of my property?

(a) If you are an interested party, you may file a petition for remission of forfeiture with the Service to return seized property that is subject to administrative forfeiture. Upon receiving the petition, the Service will refer the petition to the Solicitor to decide whether or not to grant relief.

(b) Any petition for remission of forfeiture must be filed within the time periods set out in the notice of seizure and proposed forfeiture issued under subpart B of this part.

(c) Petitions for remission of forfeiture must be concise and logically presented to facilitate review by the Solicitor. Failure to substantially comply with any of the information required by this paragraph (c) may be grounds for dismissal of the petition for remission. The petition for remission of forfeiture must contain the following:

(1) The name, address, and social security or other taxpayer identification number of the person claiming the interest in the seized property who is seeking remission.

(2) The name of the seizing agency, the asset identifier number, and the date and place of seizure.

(3) A complete description of the property.

(4) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence.

(5) A statement containing all of the facts and circumstances you rely upon to justify the remission of the forfeiture. If you rely on an exemption or an exception to a prohibition under any Act listed in § 12.2, you must demonstrate how that exemption or exception applies to your particular situation.

(6) A statement containing all of the facts and circumstances you contend support any innocent owner's defense allowed by 18 U.S.C. 983(d) that you are asserting. No person may assert an innocent owner's interest in property that is contraband or other property that is illegal to possess. A petitioner has the burden of proving by a preponderance of the evidence that the petitioner is an "innocent owner" as defined in 18 U.S.C. 983(d).

(7) A statement that the information furnished is, to the best of your knowledge and belief, complete, true, and correct and that you recognize false statements may subject you to criminal penalties under 18 U.S.C. 1001.

(d) In addition to the contents of the petition for remission described in paragraph (c) of this section, upon request, the petitioner must also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the party releasing its interest in such property.

(e) A petition for remission of property subject to administrative forfeiture must be addressed to the appropriate office identified in the notice of forfeiture.

(f) Your petition for remission must be signed by you or your lawyer. If a lawyer files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(1) The lawyer has the authority to represent you in the proceeding;

(2) You have fully reviewed the petition; and

(3) The petition is truthful and accurate in every respect to the best of your knowledge and belief.

(g) If the petitioner is a corporation, the petition must be signed by an authorized officer, supervisory employee of the corporation, or a lawyer representing the corporation, and the corporate seal must be properly affixed to the signature.

(h) In making a decision, the Solicitor will consider the information you submit, as well as any other available information relating to the matter. If you file a claim to the property, as described in § 12.36, the administrative proceeding will be terminated and the Solicitor will no longer have the opportunity or authority to review or rule on the petition for remission of the property.

§ 12.34 What are the standards for remission of forfeiture?

(a) A petition for remission must include evidence that the petitioner is either:

(1) An interested party or owner as defined in this part; or

(2) That the knowledge and responsibilities of the petitioner's representative, agent, or employee are ascribed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(b) The petitioner has the burden of establishing the basis for granting a petition for remission of property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(c) The Solicitor will presume a valid seizure and will not consider whether the evidence is sufficient to support the seizure in determining whether remission should be granted. The Solicitor will consider the information you submit, as well as any other available information relating to the matter.

(d) Willful, materially false statements or information, made or furnished by the petitioner in support of a petition for remission or the reconsideration of a denial of any such petition, will be grounds for denial of such petition and possible prosecution for filing of false statements.

(e) The provisions of the remission decision include the following:

(1) Remission is an equitable remedy and is discretionary with the Solicitor.

(2) The Solicitor may grant remission of property if the Solicitor determines that mitigating circumstances justify the remission and then only under such terms and conditions as are reasonable and just.

(i) Mitigating factors that may be considered for the sole and limited purpose of remission of forfeiture include, but are not limited to, whether:

(A) The facts demonstrate your honest and good faith intent and effort to comply with the law;

(B) You did not have the ability to prevent the violation;

(C) No evidence exists that you have engaged in past conduct similar to the violation;

(D) You have taken meaningful steps including enforcement mechanisms (*e.g.*, contractual or monetary) to prevent any violations; and

(E) The return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice.

(ii) These factors are not intended to be all inclusive and do not constitute authority in and of themselves.

(3) All remission decisions must be made with due consideration for the cumulative conservation impacts of the remission including whether:

(i) The item is an Appendix I, II, or III species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

(ii) The item is listed as threatened or endangered under the Endangered Species Act (ESA);

(iii) The violation increased the regulatory burden on government agencies; or

(iv) Remission may have an adverse effect on the integrity of any applicable permitting system or may provide an incentive to third parties to avoid meeting CITES requirements.

(4) The Solicitor has the discretion to condition his or her grant of remission of the seized property, in whole or in part, on terms and conditions that are reasonable and just. The Solicitor further has the discretion to grant remission for the limited purpose of directed re-export to the exporter of record provided that any such re-export benefits enforcement and administration of applicable wildlife laws. Any terms and conditions of remission will be in

writing and may include but are not limited to payment of those costs and expenses that the United States may, as a matter of applicable law, recover for the property.

(i) Shipment of any released property will be at your sole cost, and the risk of loss from such shipment will be your risk.

(ii) Property for which remission is granted will be released only after successful completion of all terms and conditions of remission, proper identification of the recipient of the property, and your execution of a property receipt provided by the Solicitor or the Service acknowledging receipt of the remitted property.

(5) Any decision to grant remission is separate from and does not preclude or otherwise provide relief from civil enforcement against the person or persons who committed the violations associated with the seizure and proposed forfeiture of the property. To expedite the resolution of any civil penalties that may be brought against you under the ESA (16 U.S.C. 1531 *et seq.*), the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*) in connection with violations involving any wildlife for which remission is to be granted, the Solicitor, at his or her sole discretion, may give you the opportunity to completely or partially settle the civil penalty claim at the same time that remission is granted by executing a written agreement setting forth the terms and conditions of the civil penalty settlement. Such agreement may be included in the written documentation of the terms and conditions of the parallel remission of forfeiture provided that:

(i) The terms and conditions of civil penalty settlement are clearly delineated as relating separately and solely to any civil penalty claims; and

(ii) The wildlife owner agrees in writing to waive any notice of violation and notice of assessment required by part 11 of this subchapter and the opportunity for a hearing as conditions of civil penalty settlement.

§ 12.35 How will the Solicitor notify me of its decision on my petition for remission?

(a) The Solicitor will notify you in writing of any decision that is made to grant a petition for remission or to deny a petition for remission or to dismiss the petition for failure to provide the information required in this part or to timely file that petition. Any such notification will advise you of the reasons for the decision made and the options, if any, available to you for addressing the decision.

(b) In the event that a petition for remission of forfeiture is denied, you may file a supplemental petition for reconsideration if you have information or evidence not previously considered that is material to the basis for the denial or new documentation clearly demonstrating that the denial was erroneous. Such supplemental petition must be received within 60 days from the date of the Solicitor's notification denying the original petition. Only one supplemental petition will be allowed. The Solicitor's decision on your petition for remission will be the decision for the Service.

§ 12.36 How do I file a claim to get back my seized property?

(a) If you receive a notice of seizure and proposed forfeiture, you may file a claim to the property by the deadline stated in the notice of seizure and proposed forfeiture. This deadline will be 35 days after the notice is mailed.

(b) If you did not receive a notice of seizure and proposed forfeiture, your claim must be received by the appropriate office not later than 30 days from the last date of final publication of the notice of the seizure of the property.

(c) A claim does not have to be in any particular form, but your claim must be in writing, must identify the specific property being claimed, must state your interest in the specific property being claimed, and must be made under oath subject to penalty of perjury. We will make a claim form available to you upon request.

(d) Your claim, by itself, will not entitle you or any other person to possession of the property. No bond is required to make a claim for judicial forfeiture proceedings. Rather, your claim will result in the Service referring the case, through the Solicitor, to the Department of Justice for civil judicial forfeiture. However, if you request possession of the property pending an administrative forfeiture decision under § 12.6, you will be required to post a bond under § 12.6 if your request is granted. This bond is only required to obtain interim possession of the property.

(e) Your claim must be made under oath by you as the claimant and not by an attorney or agent.

(f) If you are an individual claimant, you must sign the claim.

(1) If the claimant is a corporation or a form of limited liability business entity organized under a State law, an authorized officer or supervisory employee of the entity must sign the claim.

(2) If the claimant is a partnership or limited partnership, any general partner may sign the claim.

(3) If the claimant is a trust, estate, or fiduciary entity, such as a person to whom property is entrusted, the chief officer authorized by the trust, estate, or fiduciary entity must sign the claim.

§ 12.37 Can I get my property back while the claim is pending?

If you have filed a claim and you think that continued possession of the property by the United States during the forfeiture proceeding will cause you substantial hardship, you may request under 18 U.S.C. 983(f) that the Service return the property to you pending the resolution of the judicial forfeiture proceeding. In considering whether to grant or deny your request, the Service will consider the factors set out in 18 U.S.C. 983(f). You must furnish evidence substantiating the hardship, and none of the conditions set forth in 18 U.S.C. 983(f)(8) may apply; for example, the property may not be contraband.

§ 12.38 What happens if my property is subject to civil judicial actions to obtain forfeiture?

(a) If a claim is filed in the forfeiture proceeding under § 12.36, the Solicitor will refer the case to the Department of Justice to include in a civil forfeiture complaint or in a criminal indictment.

(b) If you file a claim (as defined in § 12.3) for property that is contraband or other property that is illegal to possess (as defined in § 12.3), and a judicial forfeiture action is not pursued within the required time period, the Solicitor will promptly notify you by letter that, if you are still interested in having the property returned, you must file a civil judicial action moving for return of the property under Rule 41(g) of the Federal Rules of Criminal Procedure (FRCP) in the district where the property was seized. The Service will also publish this notification to the general public as provided for in § 12.12.

(c) If a court determines, pursuant to FRCP 41(g), that any fish, wildlife, or plant is contraband or other property that is illegal to possess, the Director will dispose of it as provided in §§ 12.61–12.70. If no motion for return of property is filed as described in paragraph (b) of this section within 6 years of the date of publication by letter or public notice (whichever is later), the Director will deem the property abandoned and will dispose of it as provided in §§ 12.61–12.70.

Subpart D—Abandonment Procedures

§ 12.51 May I simply abandon my interest in the property?

You may voluntarily abandon your interest in property to the United States by signing a Service Form 3–2096, Fish and Wildlife Abandonment Form, or equivalent Federal, State, Tribal, or local form, or by signed letter to the Service or the Solicitor saying that you abandon all right, title, and interest you have in the property to the United States other than whatever right to seek relief (if any) was expressly reserved in the abandonment document you signed.

§ 12.52 Can I file a petition for remission for my abandoned property?

You may file a petition for remission of abandoned property with the Service and seek the return of property you had voluntarily abandoned, within the time period described in subpart B. If you have agreed to abandon property, your right to seek relief is limited to whatever process expressly was reserved in the abandonment document you signed.

Subpart E—Disposal of Forfeited or Abandoned Property

§ 12.61 What is the purpose of this subpart?

This subpart contains the provisions under which the Service will dispose of any property forfeited or abandoned to the United States.

§ 12.62 How does the Service keep track of forfeited or abandoned property?

The Service must account in official records for all property forfeited or abandoned under this subpart. These records must include the following information:

(a) A description of the property;

(b) The date and place of the seizure of the property, if appropriate, the seizure tag number, and date of forfeiture or abandonment of the property;

(c) The investigative case file number associated with the property;

(d) The name of any person known to have or to have had an interest in the property;

(e) The date, place, and manner of the disposal of the property;

(f) The name of the official responsible for the disposal of the property; and

(g) The value of the property.

§ 12.63 When may the Service return live fish, wildlife, or plants to the wild?

(a) The Service may release any live member of a native species of fish, wildlife, or plant that is capable of surviving in the wild into suitable habitat within the historical range of the species in the United States, with the permission of the landowner and the State, unless that release poses an imminent danger to public health or safety, or presents a known threat of disease transmission to other fish, wildlife, or plants.

(b) The Service may transplant any live member of a native species of plant that is capable of surviving into suitable habitat on Federal or other protected lands within the historical range of the species in the United States, with the permission of the appropriate land-management agency.

(c) The Service may not return to the wild any live member of an exotic, nonnative species of fish, wildlife (including injurious wildlife), or plant, within the United States, but may return the exotic fish, wildlife, or plant to one of the following countries for return to suitable habitat under the provisions of applicable laws, including CITES and the domestic laws of that country, if the returned species is capable of surviving:

(1) The country of export, if known, after consultation with and at the expense of the country of export; or

(2) A country that is within the historical range of the species and that is a party to CITES (Treaties and Other International Acts Series, TIAS 8249) after consultation with and at the expense of that country.

§ 12.64 How does forfeiture or abandonment affect the status of the property?

(a) After property has been forfeited or abandoned, the prior illegal status of the property, due to violations of any Act listed in § 12.2 that led to the forfeiture or abandonment of the property, is terminated. However, any subsequent holder or owner of the property must comply with all prohibitions, restrictions, conditions, or requirements that apply to a particular species of fish, wildlife, or plant under any Act listed in § 12.2, or any State, including any applicable conservation, health, quarantine, agricultural, or Customs laws or regulations.

(b) When releasing property under the provisions of this subpart, the Service will prescribe the conditions under which the property may be possessed and used and will reserve the right to resume possession of the property if it is possessed or used in violation of those conditions.

§ 12.65 How does the Service dispose of forfeited or abandoned property?

(a) The Service will dispose of any fish, wildlife, or plant forfeited or abandoned by one of the following means, unless the item is the subject of a petition for remission of forfeiture under § 12.33 or disposed of by court order (items will be disposed of in order of priority listed below):

(1) Return to the wild, as described in § 12.63(a);

(2) Transfer for use by the Service, transfer to the National Eagle and Wildlife Property Repository or to a tribe, where the item is credibly identified as an object of cultural patrimony, or transfer to another government agency for official use;

(3) Donation or loan;

(4) Sale; or

(5) Destruction.

(b) The Service may use forfeited or abandoned fish, wildlife, or plants or transfer them to another government agency, including foreign government agencies, for official use including, but not limited to, one or more of the following purposes:

(1) Training government officials to perform their official duties;

(2) Identifying protected fish, wildlife, or plants, including forensic identification or research;

(3) Educating the public concerning the conservation of fish, wildlife, or plants;

(4) Conducting law enforcement operations in performance of official duties;

(5) Enhancing the propagation or survival of a species or other scientific purposes;

(6) Presenting as evidence in a legal proceeding involving the fish, wildlife, or plants; or

(7) Returning the live fish, wildlife, or plants to the wild under § 12.63.

(c) The Service must document each transfer and the terms of each transfer.

(d) The government agency, including foreign government agencies, receiving the fish, wildlife, or plants may be required to pay all of the costs of care, storage, and transportation in connection with the transfer of the fish, wildlife, or plants, from the date of seizure, refused entry, or detention, to the date of delivery.

(e) The Service must dispose of forfeited or abandoned property, other than fish, wildlife, or plants, including vehicles, vessels, aircraft, cargo, guns, nets, traps, and other equipment, as allowed under current Federal property management regulations.

(f) When disposing of property, the Service must follow the following guidelines:

(1) The Service may dispose of any live fish, wildlife, or plant immediately upon order of forfeiture or abandonment of the property, if the Service determines that the property is likely to

perish, deteriorate, decay, waste, or greatly decrease in value if maintained by the Service, or if the expense of maintaining that property is disproportionate to its value; or

(2) The Service may dispose of all other property no sooner than 30 days after an order of forfeiture or abandonment of the property.

(g) If the property is the subject of a pending petition for remission of forfeiture under § 12.35, the Service may not dispose of the property until the Solicitor or the Attorney General, pursuant to 28 CFR part 9, makes a final decision regarding whether or not relief will be granted.

§ 12.66 How does the Service dispose of seized injurious fish or wildlife?

(a) The Service will order immediate re-export or destruction of any seized injurious fish or wildlife imported or transported in violation of our injurious species regulations in part 16 of this subchapter.

(b) The importer, exporter, or transporter will be responsible for all costs associated with the re-export or destruction of any seized injurious fish or wildlife imported, exported, or transported in violation of our injurious species regulations in part 16 of this subchapter.

(c) Any live or dead specimen, part, or product of any fish or wildlife species listed as injurious under part 16 of this subchapter will be disposed of in a manner that minimizes, to the greatest extent practicable, the possibility that additional specimens will be imported or transported in violation of our injurious species regulations in part 16 of this subchapter.

§ 12.67 When may the Service donate forfeited or abandoned property?

(a) The Service may donate forfeited or abandoned fish, wildlife, or plants, for scientific, educational, or public display purposes. The donation may be made to any person, government agency (including foreign government agencies) or public organization, as defined in § 10.12 of this chapter. The donee must have the demonstrated ability to provide adequate care and security for the fish, wildlife, or plants.

(b) A transfer document between the Service and the person, government agency (foreign or domestic), or public organization receiving the fish, wildlife, or plants, must be completed before any donation of fish, wildlife, or plants takes place. Form SF–123, Transfer Order Surplus Personal Property, should be used for transfers with agencies or persons outside of the Department of the Interior, and Form DI–104, Transfer of Property, should be used for transfers with agencies within the Department of the Interior. The donation is subject to the following conditions:

(1) The recipient must state on the transfer document the purpose for which the fish, wildlife, or plants will be used.

(2) Any attempt by the recipient to use the donation for any purpose other than that specifically stated on the transfer document entitles the Service to immediately repossess the fish, wildlife, or plants.

(3) The recipient may be required to pay all of the costs associated with the transfer of the fish, wildlife, or plants, including the costs of care, storage, transportation, and return to the Service, if applicable.

(4) The recipient may not sell the fish, wildlife, or plants, or their offspring.

(5) The recipient may be required to show the Form SF–123, DI–104, or any other transfer document that was received.

(6) The recipient is subject to the prohibitions, restrictions, conditions, or requirements that may apply to a particular species of fish, wildlife, or plant imposed by the laws or regulations of the United States or any State, including any applicable health, quarantine, agricultural, or Customs laws or regulations.

(7) Any attempt to retransfer a donation without the prior authorization of the Service entitles the Service to immediately repossess the fish, wildlife, or plants.

(8) If the transfer document identifies a time period during which the recipient of a donation may not retransfer the donation without prior approval of the Service, and an attempt to do so during this period is made by the recipient, the Service will be entitled to immediately repossess the fish, wildlife, or plants.

(9) At all reasonable times, upon prior notice, the recipient must provide authorized Service officers access to the location where the donation is kept for the purposes of inspecting the donation, and all associated records pertaining to the donation.

(10) Any donation is subject to the conditions specified in the transfer document, including, without limitation, any time periods, and any violation of these specific conditions entitles the Service to immediately repossess the fish, wildlife, or plants.

(c) The Service will not donate live fish, wildlife, or plants for human consumption.

§ 12.68 When may the Service loan forfeited or abandoned property?

(a) The Service may loan forfeited or abandoned property, fish, wildlife, or plants, for scientific, educational, or public display purposes to any person, government agency, including foreign government agencies, or public organization, as defined in § 10.12 of this subchapter, that demonstrates the ability to provide adequate care and security for the fish, wildlife, or plants.

(b) A transfer document between the Service and the person, government agency, including foreign government agencies, or public organization receiving the fish, wildlife, or plants must be completed before any loan of fish, wildlife, or plants takes place. Form SF–123, Transfer Order Surplus Personal Property, should be used for transfers with agencies or persons outside of the Department, and Form DI–104, Transfer of Property, should be used for transfers with agencies within the Department. The loan is subject to the following conditions:

(1) The recipient must state on the transfer document the purpose for which the fish, wildlife, or plants will be used.

(2) Any attempt by the recipient to use the loan for any purpose other than that specifically stated on the transfer document entitles the Service to immediately repossess the fish, wildlife, or plants.

(3) The recipient may be required to pay all of the costs associated with the transfer of the fish, wildlife, or plants, including the costs of care, storage, transportation, and return to the Service, if applicable.

(4) The recipient may not sell the fish, wildlife, or plants, or their offspring.

(5) The recipient may be subject to a periodic accounting of the care and use of the loaned fish, wildlife, or plants.

(6) The recipient is subject to the prohibitions, restrictions, conditions, or requirements that may apply to a particular species of fish, wildlife, or plant imposed by the laws or regulations of the United States or any State, including any applicable health, quarantine, agricultural, or Customs laws or regulations.

(7) Any attempt to retransfer a loan without the prior authorization of the Service entitles the Service to immediately repossess the fish, wildlife, or plants.

(8) If the transfer document identifies a time period during which the recipient of a loan may not retransfer the loan without prior approval of the Service and an attempt to do so during this period is made by the recipient, the

Service will be entitled to immediately repossess the fish, wildlife, or plants.

(9) At all reasonable times, upon prior notice, the recipient must provide authorized Service officers access to the location where the loan is kept for the purposes of inspecting the loan, and all associated records pertaining to the loan.

(10) Any loan is subject to the conditions specified in the transfer document, including, without limitation, any time periods, and any violation of these specific conditions entitles the Service to immediately repossess the fish, wildlife, or plants.

(11) Any loan is in effect for an indefinite period of time unless the transfer document specifies a date for returning the loan to the Service.

(12) Any loan remains the property of the United States, and the Service may demand the return of the loan at any time, and the recipient cannot prevent that return.

§ 12.69 When may the Service sell forfeited or abandoned property?

(a) The Service may sell, or offer for sale, forfeited or abandoned fish, wildlife, or plants, except any species, which at the time of sale or offer for sale, is:

(1) Listed in part 10 of this subchapter as a migratory bird protected by the Migratory Bird Treaty Act (16 U.S.C. 704, 706–707, 712 *et seq.*);

(2) Protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*);

(3) Listed as "Appendix I" or "Appendix II with an annotation" under the Convention on International Trade in Endangered Species (See § 23.91 of this chapter.);

(4) Listed in part 17 of this chapter as "endangered" or "threatened" under the Endangered Species Act (16 U.S.C. 1531 *et seq.*);

(5) Protected under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375–1377, 1382);

(6) Regulated as an injurious species under our injurious species regulations in part 16 of this chapter;

(7) The African elephant *(Loxodonta africana* or *Loxodonta cyclotis);* or

(8) Any fish, wildlife, or plant that is prohibited for export by the country of origin of the species.

(b) If the Service chooses to dispose of fish, wildlife, or plants by sale, we must do so under current Federal property management regulations or Customs laws and regulations, except that the Service may sell any fish, wildlife, or plants immediately to the highest bidder above the set minimum bid, if the Service determines that the fish, wildlife, or plants are likely to perish, deteriorate, decay, waste, or greatly decrease in value by keeping, or that the expense of keeping the fish, wildlife, or plants is disproportionate to their value.

(c) The Service may transport fish, wildlife, or plants that may not be possessed lawfully by purchasers under the laws of the State where the fish, wildlife, or plants are held to a State where possession of the fish, wildlife, or plants is lawful and the fish, wildlife, or plants may be sold.

(d) Fish, wildlife, or plants purchased at sale are subject to the prohibitions, restrictions, conditions, or requirements that apply to a particular species of fish, wildlife or plant imposed by the laws or regulations of the United States or any State, including any applicable conservation, health, quarantine, agricultural, or Customs laws or regulations.

§ 12.70 When may the Service destroy forfeited or abandoned property?

(a) The Service may destroy fish, wildlife, or plants under the provisions set forth in §§ 12.65 and 12.66.

(b) The Service official who performs the destruction of fish, wildlife, or plants and a witness must certify the completion of the destruction, the method of the destruction, the date of the destruction, and the type and quantity of fish, wildlife, or plants destroyed.

(c) The Service will comply with all Federal health, safety, and environmental protection laws applicable to the method of the destruction of the fish, wildlife, or plants and to the disposal of any residue or wastes resulting from the method of the destruction of the fish, wildlife, or plants.

Subpart F—Recovery of Storage Costs and Return of Property

§ 12.81 When can the Service assess fees for costs incurred by the transfer, boarding, handling, or storage of property seized or forfeited?

(a) If any fish, wildlife, plant, or item of evidence is seized or forfeited under the ESA (16 U.S.C. 1531 *et seq.*), you or any person whose act or omission was the basis for the seizure will be charged a reasonable fee for expenses to the United States connected with the transfer, boarding, handling, or storage of the seized or forfeited property. If any fish, wildlife, or plant is seized in connection with a violation of the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*), you or any person convicted or assessed a civil penalty for this violation will be assessed a reasonable fee for expenses of the United States connected with the storage, care, and maintenance of the property.

(1) Within a reasonable time after seizure or forfeiture, the Service may send by registered mail, certified mail, or private courier, return receipt requested, a bill for this fee. The bill will contain an itemized statement of the applicable costs, together with instructions on the time and manner of payment.

(2) You must make payment under terms of the bill. If you fail to pay, you may be subject to collection proceedings under the Federal Claim Collection Act, 31 U.S.C. 3711 *et seq.*, as well as the Federal Debt Collection Act, 31 U.S.C. 3701 *et seq.*, and the possible refusal of clearance of future shipments, and disqualification from receiving or exercising the privileges of any Service permit.

(b) If you object to the costs described in the bill, you may, within 30 days of the date on which you received the bill, file written objections with the Special Agent in Charge (SAC) for the U.S. Fish and Wildlife Service Office of Law Enforcement in the region in which the seizure occurred. Upon receipt of the written objections, the SAC will promptly review them and, within 30 days, deliver in writing a final decision. In all cases, the SAC's decision will constitute final administrative action on the matter.

Dated: June 2, 2016.

Karen Hyun,

Assistant Secretary for Fish and Wildlife and Parks.

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FEDERAL REGISTER PAGES AND DATE, JUNE

34859–35268	1
35269–35578	2
35579–36136	3
36137–36432	6
36433–36786	7
36787–37120	8
37121–37484	9
37485–38060	10
38061–38568	13
38569–38880	14
38881–39174	15
39175–39540	16
39541–39866	17

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

9454 34859
9455 36127
9456 36129
9457 36131
9458 36133
9459 36135
9460 39172
9461 39539

Administrative Orders:

Memorandums:
Memorandum of May 18, 2016 37479
Memorandum of May 24, 2016 35579
Presidential Determinations:
No. 2016-06 of May 19, 2016 37481
No. 2016-07 of June 1, 2016 37483
Notices:
Notice of June 10, 2016 38879

5 CFR

Proposed Rules:

630 36186
2638 36193

6 CFR

5 36433

7 CFR

301 39175
457 38061
906 38881
915 38883
930 39176
985 38885
1205 38893
1214 38894
1738 37121
4279 35984
4287 35984

Proposed Rules:

52 39596
205 36810
210 36480
215 36480
220 36480
225 36480
226 36480
235 36480
930 38975

10 CFR

429 .... 35242, 36992, 38266, 38338
430 .... 35242, 36992, 38338

Proposed Rules:

73 34916
429 38398
430 38398
460 39756
850 .... 36704, 38610

11 CFR

4 34861
100 34861
104 34861
106 34861
109 34861
110 34861
113 34861
114 34861
9004 34861
9034 34861

12 CFR

1083 38569

Proposed Rules:

42 37670
50 35124
Ch. II 38631
236 37670
249 35124
252 38610
329 35124
372 37670
741 37670
751 37670
1232 37670

14 CFR

Ch. I 36144, 38906
1 38572
11 38572
31 38067
39 .... 34864, 34867, 34871, 34876, 35581, 36137, 36139, 36433, 36436, 36438, 36440, 36443, 36447, 36449, 36452, 37122, 37124, 37485, 37488, 37492, 37494, 37496, 38573, 38577, 38897, 38901, 38903, 39541, 39543, 39545, 39547, 39553
71 .... 34879, 34880, 36140, 36141, 37126, 37127, 38580, 39182, 39556
73 38069
97 .... 39557, 39559, 39562, 39565, 39567, 39569
121 38572
125 38572
135 38572
382 38572
1274 35583

Proposed Rules:

11 34919
29 35654
39 .... 34927, 34929, 35655, 35657, 36211, 36810, 36813, 37166, 38113, 38115, 38978,

38979, 38980, 38981, 38982, 38983, 39597, 39601
71 ....36214, 36815, 39217, 39603
382....34931
404....34919
405....34919
420....34919
431....34919
435....34919
437....34919
460....34919

15 CFR

6....36454
710....36458
734....35586
740....35586
745....36458
750....35586
772....35586
774....36458
1110....34882

Proposed Rules:

730....36481
747....36481
748....36481
762....36481

16 CFR

1227....37128

Proposed Rules:

259....36216
460....35661

17 CFR

240....39808
249....37132

Proposed Rules:

1....36484
37....38458
38....36484, 38458
40....36484
50....39506
150....38458
170....36484
240....37670
275....37670
303....37670

18 CFR

420....35608

Proposed Rules:

401....35662
420....35662

20 CFR

404....37138
416....37138

Proposed Rules:

404....37557
416....37557

21 CFR

1....39183
14....37153
Ch. I....37500, 37502
510....36787
520....36787, 36790
522....36787
556....36787
558....36787, 36790
573....35610
660....38911
801....38911
809....38911
886....37499

Proposed Rules:

172....38984
175....37561
176....37561
177....37561
178....37561

22 CFR

35....36791
103....36791
120....35611
123....35611
124....35611
125....35611
126....35611
127....36791
138....36791

24 CFR

28....38931
30....38931
87....38931
180....38931
578....38581
3282....38931

Proposed Rules:

888....39218
982....39218
983....39218
985....39218

25 CFR

23....38778
41....38585
226....39572

26 CFR

1....36793, 37504

Proposed Rules:

1 ....36816, 38019, 38637
46....38019
54....38019
57....38019
301....38019, 38637

27 CFR

478....38070

28 CFR

104....38936

Proposed Rules:

16....36228
571....36485

29 CFR

1601....35269
4022....38948
4044....38948

Proposed Rules:

1910....38117
2590....38019
4231....36229

30 CFR

203....36145
250....36145
251....36145
252....36145
254....36145
256....36145
280....36145
282....36145
290....36145
291....36145
1241....37153

Proposed Rules:

56....36818
57 ....36818, 36826, 39604
70....36826, 39604
72....36826, 39604
75....36826, 39604

31 CFR

Proposed Rules:

1010....35665

32 CFR

311....38950
706....36463

33 CFR

3....38592
100 ....34895, 35617, 36154, 36465, 36468, 37156, 37507, 37510, 37513, 38071, 38592, 38951, 39184, 39187, 39191, 39582
117 ....34895, 36166, 36470, 36798, 37156, 37178, 37513, 37514, 38595, 38951, 39584
165 ....35619, 36154, 36167, 36168, 36169, 36171, 36174, 36471, 36800, 37158, 37514, 38082, 38084, 38592, 38595, 38599, 39193, 39194, 39195

Proposed Rules:

100....37562
110....37168
117....34932
165 ....35671, 36243, 36488, 36490, 36492, 36494, 36831, 38119, 38638, 39234
Ch. II....35186

34 CFR

Ch. VI....39196

Proposed Rules:

Ch. 1....36833
30....39330
668....39330
674....39330
682....39330
685....39330
686....39330

36 CFR

1202....36801

Proposed Rules:

242....36836

37 CFR

Proposed Rules:

202....37564

39 CFR

20....35270
3020....38952

40 CFR

49....35944
51....35622
52 ....35271, 35622, 35634, 35636, 36176, 36179, 36803, 37160, 37162, 37517, 38957, 38963, 39197, 39208, 39211, 39424, 39585
60....35824
63....38085
70....35622
71....35622
180 ....34896, 34902, 37520, 38096, 38101, 38601, 38604
271....35641
370....38104

Proposed Rules:

49....38640
52 ....34935, 34940, 35674, 36496, 36842, 36848, 37170, 37175, 37564, 38640, 38986, 38992, 38999, 39002, 39108, 39236, 39604, 39605
55....39607
70....38645
71....38645
261....37565
63....38122
372....35275

41 CFR

60-20....39108

42 CFR

403....35643
412....34908
414....34909
425....37950
495....34908

Proposed Rules:

405....37175
412....37175
413....37175
482....39448
485....37175, 39448

43 CFR

10000....36180

44 CFR

64....37521

45 CFR

95....35450
Ch. XIII....35450
1321....35644
1322....35644
1323....35644
1324....35644
1325....35644
1326....35644
1327....35644
1328....35644
1331....35643
1355....35450
1356....35450
1385....35644
1386....35644
1387....35644
1388....35644

Proposed Rules:

5....39003
144....38019
146....38019
147....38019
148....38019
158....38019

46 CFR

10....35648
535....38109

47 CFR

1....36805
12....35274

15....38965
27....38965
64....36181
73....35652
300....34913

Proposed Rules:

1....35680, 39611
15....36501, 36858
69....36030

48 CFR

207....36473
209....36473
211....36473
215....36473
237....36473
242....36473
245....36473
252....36473
501....36423
511....36425
515....36423
517....36422
538....36425
552....36422, 36423, 36425
1849....36182
1852....36182

Proposed Rules:

5....36245
14....36245
19....36245
22....36245
25....36245
28....36245
43....36245
47....36245
49....36245
52....36245
53....36245
202....36506
205....36506
212....36506, 39482
227....39482
237....36506
252....36506, 39482

49 CFR

107....35484
171....35484
172....35484
173....35484
175....35484
176....35484
177....35484
178....35484
179....35484
180....35484
214....37839
219....37893
234....37521
385....39587
392....36474

Proposed Rules:

218....39014
240....36858
242....36858
391....36858

50 CFR

17....36388, 36762
216....36183
300....36183
622....37164, 38110
635....38956
648....38111, 38969, 39590, 39591
660....35653, 36184, 36806, 39213
679....34915, 36808, 37534, 38111

Proposed Rules:

12....39848
17....35698
18....36664
20....38049
92....39618
100....36836
219....38516
226....35701, 36078
622....34944, 39016
635....36511, 39017
648....36251
660....34947, 35290
665....38123
679....39237

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 16, 2016

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